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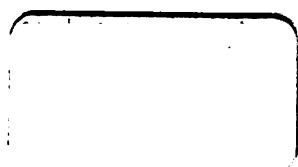
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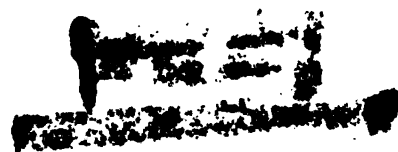
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DIGEST
OF
DECISIONS AND OPINIONS
RELATING TO
PENSIONS AND BOUNTY LAND,
WITH
A SUPPLEMENT
CONTAINING
THE PENSION LAWS, ARRANGED AND CONSOLIDATED, THE BOUNTY-
LAND LAWS, LAWS ENACTED AND REPEALED SINCE MARCH 4,
1861, AND THE RULES OF PRACTICE AS TO APPEALS.
ALSO
AN HISTORICAL INTRODUCTION NARRATING THE ORIGIN AND
DEVELOPMENT OF THE PENSION SYSTEM, TABLES OF
CASES DIGESTED, CITED, AND OVERRULED, AND
OF STATUTES CITED AND CONSTRUED.

Prepared under the direction and supervision of

JOHN M. REYNOLDS,
Assistant Secretary of the Interior,

BY

WILLIAM L. CHITTY and JOHN W. BIXLER.
Members of the Board of Pension Appeals.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1897.

OMISSIONS.

[NOTE.—These cases were omitted from the body of the Digest, and should be inserted where indicated.]

P. 53, preceding SUBTITLE 36, insert:

A claimant for pension may revoke a power of attorney for cause, such as neglect or failure on the part of the attorney to furnish evidence within a reasonable time in support of the claim; and such revocation is binding on the Commissioner of Pensions. *Milton F. Sweet* (Asst. Sec. Bussey), 5 P. D., 267.

P. 257, following claim of *Rachel Marshall*, insert:

Where two declarations, alleging different disabilities and filed by different attorneys, are pending simultaneously, such declarations should be adjudicated jointly and such attorneys be considered as joint attorneys, and the fee allowed be equally divided between them. *Franklin B. Jewell* (Asst. Sec. Bussey), 5 P. D., 285.

Overruled: 7 P. D., 183.

Where two declarations are filed by different attorneys in the same claim, the Commissioner should either recognize the first attorney alone, as entitled to prosecute the whole claim, or require the claimant's written consent to the recognition of both attorneys and an equal division between them of the fee. *In re James Leonard* (Asst. Sec. Bussey), 5 P. D., 291.

P. 273, preceding claim of *Joseph Armstrong*, insert:

The attorney in this claim was suspended on a charge of having received an illegal fee, and during his suspension the claim was completed. Subsequently the suspension was removed, the charge not being corroborated by any evidence, and the attorney having made affidavit as to his innocence: *Held*, That under rule 7 his fee should be paid him. *In re Virgil P. Gunsalus* (Asst. Sec. Bussey), 5 P. D., 126.

P. 285, following claim of *William Thurston*, insert:

The fact that a claimant filed his first declaration in the name under which he served as a soldier, which was not his proper name, the second declaration being in his true name, does not destroy the identity of the two declarations, nor affect the rights of the attorneys who filed the first declaration. *James Leonard* (Asst. Sec. Bussey), 5 P. D., 291.

P. 393, preceding SUBTITLE 2, insert:

A post chaplain in the Army may not receive both his pay as chaplain and pension for the same period. *Delmer R. Lowell* (Asst. Sec. Bussey), 5 P. D., 336.

P. 466, following claim of *Robert W. P. Muse*, insert:

A soldier's pensionable status both under the act of June 27, 1890, and under the act of January 29, 1887, is determined by the length of time for which he was paid for actual service. *Albert K. Ransom* (Asst. Sec. Bussey), 5 P. D., 183.

Overruled: 7 P. D., 235.

P. 478, as SUBTITLE 13½, insert:

13½. Chaplains.

Chaplains in the Regular Army are subject to the provisions of section 4724, Revised Statutes, as they are persons possessing office in the Army entitling to compensation, and are therefore the recipients of pay on account of rank or station in the service within the meaning of said section. *Delmer R. Lowell* (Asst. Sec. Bussey), 5 P. D., 336.

SECRETARIES OF WAR.

(During the period the War Department administered the pension laws: *See Introduction.*)

Name.	Date of commission.
LEWIS CASS	August 1, 1831.
BENJAMIN F. BUTLER	March 3, 1837.
JOEL R. POINSETT	March 7, 1837.
JOHN BELL	March 5, 1841.
JOHN MCLEAN	September 13, 1841.
JOHN C. SPENCER	October 12, 1841.
JAMES M. PORTER	March 8, 1843.
WILLIAM WILKINS	February 15, 1844.
WILLIAM L. MARCY	March 6, 1845.

SECRETARIES OF THE INTERIOR.

THOMAS EWING	March 8, 1849.
THOMAS M. T. MCKENNAN	August 15, 1850.
ALEXANDER H. H. STUART	September 12, 1850.
ROBERT MCCLELLAND	March 7, 1853.
JACOB THOMPSON	March 6, 1857.
CALEB B. SMITH	March 5, 1861.
JOHN P. USHER	January 8, 1863.
JAMES HARLAN	May 15, 1865.
ORVILLE H. BROWNING	July 27, 1866.
JACOB D. COX	March 5, 1869.
ZACHARIAH CHANDLER	October 19, 1875.
CARL SCHURZ	March 12, 1877.
SAMUEL J. KIRKWOOD	March 8, 1881.
HENRY M. TELLER	April 17, 1882.
LUCIUS Q. C. LAMAR	March 6, 1885.
WILLIAM F. VILAS	January 16, 1888.
JOHN W. NOBLE	March 6, 1889.
HOKE SMITH	March 6, 1893.
DAVID R. FRANCIS	September 1, 1896.
CORNELIUS N. BLISS	March 6, 1897.

FIRST ASSISTANT SECRETARIES OF THE INTERIOR.

HENRY L. MULDROW	July 1, 1885.
GEORGE CHANDLER	April 2, 1889.
WILLIAM H. SIMS	March 31, 1893.
THOMAS RYAN	April 1, 1897.

ASSISTANT SECRETARIES OF THE INTERIOR.

JOHN P. USHER	March 20, 1862.
WILLIAM T. OTTO	January 28, 1863.
BENJAMIN R. COWEN	April 17, 1871.

VI

CHARLES T. GORHAM	March 10, 1876.
ALONZO BELL	April 9, 1877.
MERRITT L. JOSLYN	July 28, 1882.
HENRY L. MULBROW	March 26, 1885.
GEORGE A. JENKS	July 1, 1885.
DAVID L. HAWKINS	June 17, 1886.
CYRUS BUSSEY	March 19, 1889.
JOHN M. REYNOLDS	April 10, 1893.

ATTORNEYS-GENERAL.

(Whose opinions with reference to pensions are digested herein.)

Name.	Date of commission.
RICHARD RUSH	February 10, 1814.
WILLIAM WIRT	November 13, 1817.
JOHN M. BERRIEN	March 9, 1829.
ROGER B. TANEY	July 20, 1831.
BENJAMIN F. BUTLER	November 15, 1833.
FELIX GRUNDY	July 5, 1838.
HENRY D. GILPIN	January 11, 1840.
JOHN J. CRITTENDEN	March 5, 1841.
HUGH S. LEGARÉ	September 13, 1841.
JOHN NELSON	July 1, 1843.
JOHN Y. MASON	March 6, 1845.
NATHAN CLIFFORD	October 17, 1846.
ISAAC TOUCEY	June 21, 1848.
REVERDY JOHNSON	March 8, 1849.
JOHN J. CRITTENDEN	July 22, 1850.
CALEB CUSHING	March 7, 1853.
JEREMIAH S. BLACK	March 6, 1857.
EDWIN M. STANTON	December 20, 1860.
EDWARD BATES	March 5, 1861.
JAMES SPEED	December 2, 1864.
HENRY STANBERY	July 23, 1866.
WILLIAM M. EVARTS	July 15, 1868.
EBENEZER ROCKWOOD HOAR	March 5, 1869.
AMOS T. ACKERMAN	June 23, 1870.
GEORGE H. WILLIAMS	December 14, 1871.
EDWARDS PIERREPONT	April 26, 1875.
ALPHONZO TAFT	May 22, 1876.
CHARLES DEVENS	March 12, 1877.
WAYNE MACVEAGH	March 5, 1881.
BENJAMIN HARRIS BREWSTER	January 2, 1882.
AUGUSTUS HILL GARLAND	March 6, 1885.
WILLIAM H. H. MILLER	March 5, 1889.
RICHARD OLNEY	March 6, 1893.
JUDSON HARMON	June 8, 1895.

P R E F A C E.

HON. CORNELIUS N. BLISS,
Secretary of the Interior.

SIR: This digest, prepared under my direction and supervision, embraces leading decisions relative to claims for pension and bounty land. These extend from the organization of the pension system to the present time. Included herewith will be found decisions by the Secretaries of the War and of the Interior Departments as well as opinions by the Attorneys-General of the United States, and the judicial holdings of the United States Supreme Court and the Court of Claims in matters pertaining to these subjects. Its publication was authorized on the 26th day of February, 1897, by the approval and order of the Secretary of the Interior.

The work of digesting and arranging the decisions was committed to John W. Bixler and William L. Chitty. Valuable aid has been rendered by Edward P. Hall and A. E. Rowell in editorial work as the volume was going through the press.

In 1881 Calvin B. Walker, deputy commissioner, by order of the Commissioner of Pensions, compiled a treatise including a digest of the laws of the United States governing the granting of Army and Navy pensions and bounty-land warrants and decisions of the Secretary of the Interior, with the rulings and orders of the Commissioner of Pensions thereunder; which treatise was published under the authority of the Secretary of the Interior. In 1885 a more extended treatise, of like character, was prepared by Frank B. Curtis and William H. Webster, and published under similar authority. These, with the earlier publication of Mayo and Moulton, substantially represent the official publications on the subject of pensions and bounty-land laws and their interpretation by those charged with the duty of executing them.

Commencing in 1887, the Department has issued eight printed volumes of decisions under these laws, embracing over twelve hundred cases. Previous to 1887 the decisions were written in bound ledgers.

It has been said that the pension law is a law sui generis. Its system is broad and complex, embracing the most abstruse propositions of legal science. The necessity for a comprehensive volume, at once homogeneous in arrangement and all-inclusive in its scope, will be readily

apparent. This book is designed to meet that want, and to present in the simplest and most compact form a suitable guide to the principles that have governed in the adjudication of claims arising under the pension and bounty-land laws; so that the reader, the practitioner, and the executive officers may, without needless delay or labor, lay hold of the correct rules to apply in any given case.

The volume includes a supplement containing the pension laws as arranged and consolidated by T. Fletcher Dennis, with the assistance of D. S. Porter; and a reference table prepared by W. L. Chitty, showing the laws so arranged. It includes, also, the bounty-land laws, laws enacted and repealed since March 4, 1861, and the rules of practice as to appeals and attorneys.

An historical sketch showing the origin and development of the pension system, to serve as an introduction to the volume, has been prepared by W. T. Pierson, acting chief of the division of pension affairs. Valuable data entering into the details of this sketch were contributed by the Pension Bureau.

It is believed that all these, together with the tables of cases, of cases cited and cases overruled, and of statutes cited and construed, make this compilation a complete general reference book as to the laws and opinions which have governed, and which now govern, in granting pensions and bounty-land warrants.

Very respectfully,

JNO. M. REYNOLDS,
Assistant Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 1, 1897.

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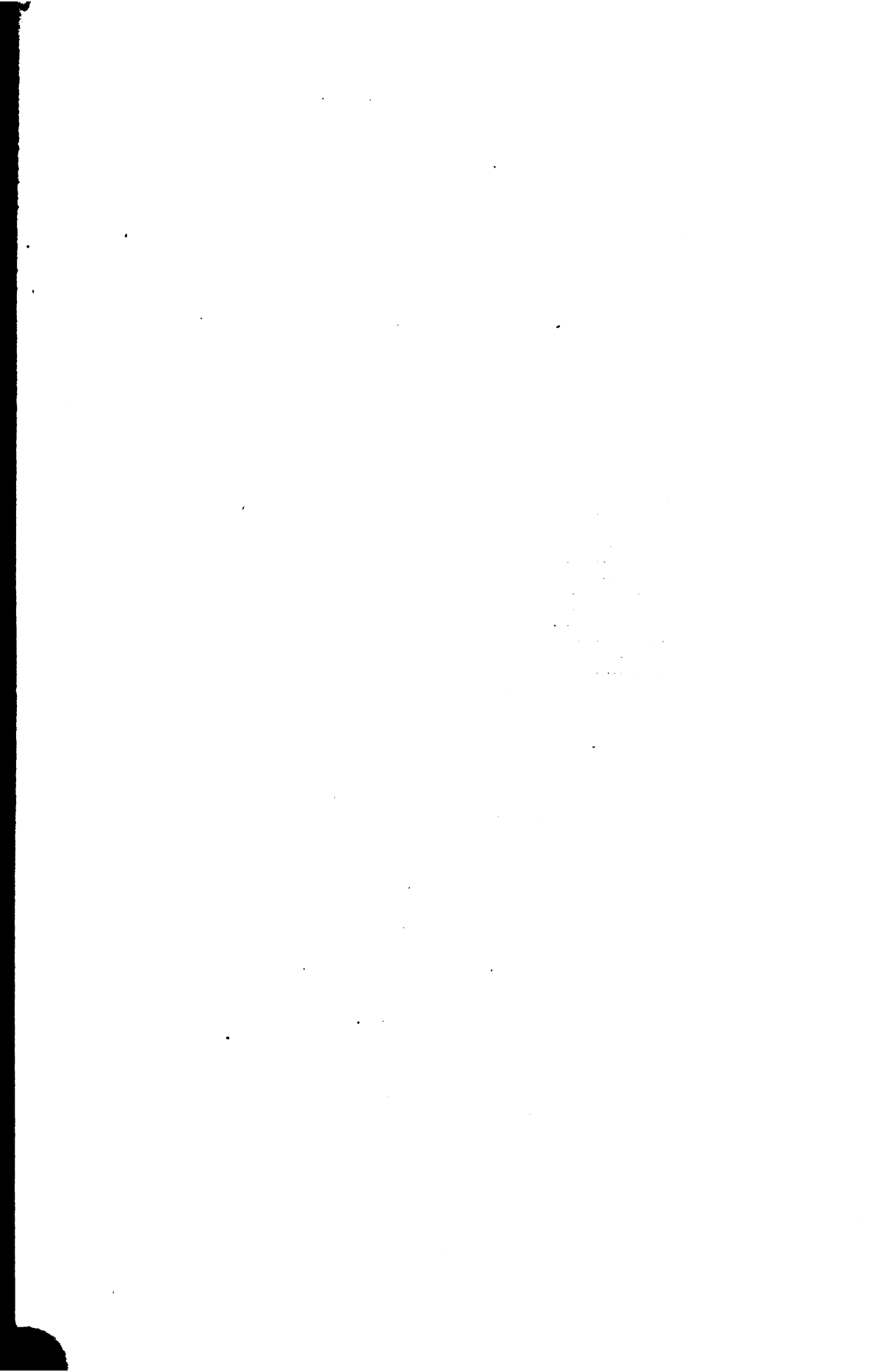
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INTRODUCTION.

A BRIEF HISTORY OF THE ORIGIN AND DEVELOPMENT OF THE PENSION SYSTEM OF THE UNITED STATES.

The first compilation of the pension laws was issued in 1833, under the direction of Hon. Lewis Cass, then Secretary of War, and the general policy of the Government in regard to pensions was thus made known.

Legislative provisions for pensions have sometimes been made by promissory resolves, in anticipation of the contingencies on which they were based, by way of encouraging enlistments, continued service, and personal daring. Especially was this true in the early history of this nation.

In the next months after the Declaration of Independence the old Congress, on August 26, 1776, passed resolutions promising pensions to soldiers and seamen who might be disabled in the war. Shortly after that date, on the 15th of May, 1778, half pay was promised for seven years after the conclusion of the war to all commissioned officers who should continue in the Army to the end of the war, and on the 25th of September, 1778, the benefits of the resolution of August 26, 1776, were made to reach back to all cases of disability from the commencement of hostilities on the 19th of April, 1775.

Thus, as it was said in the report of Secretary Cass, at this early period of the first military operations in the war for independence was the magnanimous, politic, just, and grateful system of pensions commenced by anticipation, and from that time our National Legislature has gone on, step by step, to complete the details of this system and to expand the system itself to meet all the demands of justice, gratitude, and humanity toward those heroes who have rendered military and naval service and come within the conditions of the laws.

By joint resolution of July 9, 1794, the Secretary of the War Department was directed to make out a list of invalid pensioners.

The pension law of May 15, 1828, granting full monthly pay for life (which was founded on the resolution of October 21, 1780), was executed at the Treasury Department, but by joint resolution of June 28, 1832, all duties devolved upon the Secretary of the Treasury in relation to pensions were transferred to the Secretary of War.

On March 2, 1833, an independent bureau was established under the management of a Commissioner of Pensions, who, under the direction of the Secretary of War, was charged with the execution of such duties in relation to the pension laws as may be prescribed by the President of the United States.

For a time the navy pension laws were executed as a distinct system in the Navy Department. By the fourth section of the act of March 4, 1840, however, the pension business transacted in the Navy Department was transferred to the office of the Commissioner of Pensions.

By the act of January 20, 1843, the Commissioner of Pensions was charged with such duties in relation to the laws granting military bounty lands as may be assigned to him by the Secretary of War, under the sanction of the President; and the act of March 3, 1849, creating the Department of the Interior, transferred the Pension Office to that Department, with which it has ever since been connected.

Thus, step by step, the duty of executing all the body of the laws making up the pension system was finally centered in the Pension Office, where it has always since abided, subject to the appellate power of the Secretary of the Interior.

COMPLIMENTAL PENSIONS.

Early in the system there grew up a class of what may be termed complimentary pensions, making provision for the indigence, the privations, the hardships, and disabilities of a less definite character than those of invalids, but necessarily incident to the military life; and these complimentary pensions, which were largely in their nature gratuitous, were anticipated by the bounty-land resolution of September 16, 1776.

CLASSIFICATIONS.

The three great foundations of the pension system, then, may be classified, in the general terms, "invalid pensions," "gratuitous or service pensions," and "land bounties." And these three, enlarged upon, expanded, and multiplied in many forms, remain still the woof and warp of the entire pension system.

The Supreme Court of the United States said in Teller's Case (107 U. S. Repts.) "that no pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, distribute, or recall at its discretion."

The act of Congress approved December 21, 1893, declares that a pension shall be deemed and held to be a vested right in the grantee to that extent that payment thereof shall not be suspended or withheld without notice to the grantee of not less than thirty days.

ORIGIN OF INVALID PENSION ROLLS.

Originally the pensions were granted and paid by the States, and, on September 29, 1789, Congress enacted a law, and provided "that

the military pensions which have been granted and paid by the States, respectively, in pursuance of the acts of the United States in Congress assembled, to the invalids who were wounded and disabled during the late war shall be continued and paid by the United States from the 4th day of March last, for the space of one year, under such regulations as the President of the United States may direct;" which provision was continued by act of June 16, 1790.

The act of February 28, 1793, provided that claims for invalid pensions should be proven before the courts, and cases transmitted to the Secretary of War, who should examine the muster rolls as to service, and transmit the papers to Congress for action.

The act of June 7, 1794, authorized the Secretary of War to examine the evidence, and if satisfactory to place the names upon the pension rolls. This provision was repealed by act of April 10, 1806, which required the cases to be reported to Congress for six years from the passage of the act (extended for six years by act of April 25, 1812). The Secretary of War was again authorized to place the names on the pension rolls, without reference to Congress, by act of March 3, 1819, which authority was exercised until the establishment of the Department of the Interior (act of March 3, 1849).

REVOLUTIONARY PENSIONERS.

The act of March 18, 1818, the indigent act, provided that every officer, noncommissioned officer, musician, marine, private soldier, etc., who served in the war of the Revolution until the end thereof, or for the term of nine months or longer at any period of the war, and who by "reason of his reduced circumstances in life was, or should be, in need of assistance of his country for support," should receive a pension from the United States; if an officer, of \$20 per month; noncommissioned officer, private, etc., \$8 per month; to continue during life.

HALF-PAY PENSIONS TO WIDOWS AND ORPHANS.

These pensioners were placed on the rolls by the Secretary of War, and payments were made in the same manner as pensions to invalids.

FULL-PAY PENSIONS.

The act of May 15, 1828, allowed full pay for life to surviving officers and soldiers of the Revolution, in the Continental line, who continued in service to the termination of the war, commencing on the 3d of March, 1826; foreign officers to be excluded; payments to be made under the direction of the Secretary of the Treasury.

The act of June 7, 1832, made similar provision, commencing March 4, 1831, for all officers (excepting foreign), noncommissioned officers, musicians, private soldiers, and Indian spies in the Continental State troops, volunteers, or militia, who served two years during the war of

the Revolution, and proportionate rate of pay for shorter term of service of not less than six months; to be paid under the direction of the Secretary of the Treasury.

The execution of the act was transferred to the Secretary of War by resolution of Congress, June 28, 1832, and the claims thereunder were adjudicated by the Commissioner of Pensions, while claims under former act (May 15, 1828) continued to be adjudicated and paid at the Treasury Department (through the Bank of the United States) until June 1, 1835, when the duties were transferred to the Secretary of War (under act of March 3, 1835). The payments from the Treasury were for full amount due at time of adjudication. The fourth and subsequent semiannual payments were made by the Bank of the Metropolis, "as agent," Washington, D. C.

PENSIONS TO WIDOWS AND ORPHANS.

The "five years' half-pay" act of July 4, 1836, the provisions of which extended back to April 20, 1818 (thus including all those embraced in the act of March 19, 1836), and forward without limitation, was the foundation of what is known as "pensions to widows and orphans," and under this act (with the exception of the bounty-land cases, section 2, act of April 16, 1816) the first widows' and orphans' claims were adjudicated by the Commissioner of Pensions, or in the Pension Bureau. All claims arising under the series of acts ending April 20, 1818, for half pay continued to be adjudicated and paid through the Third Auditor's Office. The acts making appropriations for pensions recognized and sanctioned this practice. The first annual appropriation act thereafter (January 18, 1837) reads:

For pensions to widows and orphans under the act of the fourth of July, one thousand eight hundred and thirty-six, five hundred and fifty-two thousand dollars; for pensions to widows and orphans, payable through the office of the Third Auditor, four thousand dollars.

The provisions of the act of July 4, 1836, were enlarged and extended by the acts of July 7, 1838; March 3, 1843; June 17, 1844; July 21, 1848; July 29, 1848; February 3, 1853, and June 3, 1858; and these "old war" pensioners were finally, by the acts of July 25, 1866, and July 27, 1868, placed upon the same footing with the widows and orphans of the war of the rebellion (pensioned under the act of July 14, 1862).

The last appropriation for "half-pay pensions" was made April 5, 1856, the last warrant on the appropriation drawn in 1869, and the unexpended balance (\$24,077.16) carried to the surplus fund in 1872, such pensions having been at that time completely merged in the class known as "widows and others."

APPROPRIATIONS FOR PENSIONS.

From 1789 to 1793, and from 1802 to 1818 (inclusive), provision was annually made for the payment of "invalid pensions" in acts making appropriations for the "support of the Government." From 1794 to

1797 "military pensions," and from 1798 to 1801 "invalid pensions," were included in appropriations for years 1796 and 1797, including "widows and children of officers" (half pay).

The appropriations during the above period to June 30, 1818, were disbursed under the direction of the Secretary of the Treasury. The act of April 9, 1818, provided that the "annual allowance to the pensioners of the United States" should be disbursed under the direction of the Secretary of War.

Prior to 1818, with the probable exception of the years 1796 and 1797, "half-pay" pensions were paid from "pay of the Army," appropriated for in acts "for the support of the military establishment."

In 1817 and 1818 the Paymaster-General included in his estimates, under head of "Pay," half-pay pensions to the amount of \$410,000 (under act of April 16, 1816, first section), "payable through Pay Department," and the above sum was included in amount appropriated for "Pay of the Army."

When the offices of the Second and Third Auditors were established (act of March 3, 1817), the President of the United States, under authority of first section of act of March 3, 1800, transferred from the appropriation "For pay of pensions to officers and soldiers of the Revolutionary Army" to appropriation for "Half-pay pensions" the following sums:

October 10, 1818.....	\$33, 138. 98
March 31, 1819.....	122, 000. 00
August 23, 1819.....	78, 000. 00

The first sum (\$33,138.98) was placed to the credit of Robert Brent, Paymaster-General. The remainder (\$200,000) was placed to the credit of Robert Brent and Nathan Towson, Paymaster-General, and the pension agents in the several States and Territories, and charged to their accounts on the books of the offices of the Second and Third Auditors. This seems to have been the origin of the "half-pay pensions" appropriation.

Beginning with appropriation act of February 15, 1819, "for military service," "invalid pensions," "Revolutionary pensions," and "half-pay pensions to widows and orphans" were annually provided for.

MANNER OF PAYMENT.

Pensions to military invalids, provided for in appropriations for the "support of the Government," were paid by the commissioners of loans (see sec. 6, act of August 4, 1790, chap. 34, vol. 1, p. 140), bonded between \$5,000 and \$10,000, in the original thirteen States, who were designated as "agents for paying pensions," from 1790, and in the several Territories and the Districts of "Maine" and "Columbia" from 1816 (see act of April 24, 1816) by "pension agents." Payments were also made to individual pensioners residing in localities where no agent had been appointed direct from the Treasury, the names of such pen-

sioners being inscribed on the roll of the War Department and not on that of any agency. (See act of January 7, 1809.) The appropriations being under the control of the Secretary of the Treasury, the accounts were adjusted by the Auditor and Comptroller and filed in the office of the Register of the Treasury, who kept the accounts and who was required by the act of September 2, 1789, to receive the accounts from the Comptroller and to preserve such accounts with the vouchers and certificates.

This was the practice to June 30, 1818, from which date, under the provisions of the act of April 9, 1818, the Third Auditor was required to receive and adjust such accounts; that is, to perform the duties, as successor to accountant of the War Department, previously performed by the Auditor and Register as accountant of the Treasury Department, the appropriation having passed under the control of the Secretary of War.

PENSIONS TO THE REVOLUTIONARY PENSIONERS.

Under act of March 18, 1818, and subsequent "indigent" acts pensions were paid by the agents for paying invalid pensioners, and their accounts rendered to the Third Auditor.

Full-pay pensions to March 4, 1835, were paid first installment, and semiannually thereafter, by Treasury drafts payable at the Bank of the United States, or its branches, as requested by the pensioners, "out of any money in the Treasury not otherwise appropriated;" to March 4, 1829, and semiannually thereafter, by Bank of the Metropolis, Washington. From March 4, 1835, they were paid by the pension agents in the regular manner.

HALF-PAY PENSIONS TO WIDOWS AND ORPHANS.

Appropriations for "half-pay pensions" being originally included in "pay of the Army," provided for in appropriations for the "Military Establishment" and disbursed under direction of the Secretary of War, the claims arising under the several acts were adjusted and paid through the office of the Accountant of the War Department by warrant of the Secretary of War on the Treasurer of the United States until May 2, 1814, when by regulation of the War Department they were placed under the jurisdiction of the Paymaster-General and paid through the Pay Department of the Army until April, 1816.

The second section of the act of April 16, 1816, provided that "half pay" in cases where guardians of minors of deceased noncommissioned officers and soldiers of the Regular Army relinquished claim to bounty land (to which they were entitled under section 12, act of January 11, 1812) should be paid "when and where other military pensions are or shall be paid."

All such "land cases," as they were termed, were adjusted in the Pension Bureau of the War Department, the first payment on some of

them made by the Paymaster-General, and the cases reported to the agents for paying pensions, for completion of payment for five years, namely, from February 17, 1815, to February 17, 1820, the funds for that purpose being drawn from appropriation for "Invalid or military pensions" to 1818.

Cases of widows and orphans of commissioned officers of the Regular Army and of officers and soldiers of militia and volunteers (first section of same act) were adjudicated by the Paymaster-General, and cases reported to the pension agents for completion, remitting at the same time the necessary funds for that purpose. If the entire five years was due at the time of adjustment, or if the pensioner resided in a locality where no agent had been appointed, the entire amount was paid by the Paymaster-General or an officer of the Pay Department. This was the practice until June 1, 1821, when the duties of the Paymaster-General were transferred to the Third Auditor in this class of cases.

It will be seen that while the accounts of pension agents, which embrace "invalids," "Revolutionary," and "half pay" to guardians of minors (sec. 2, act April 16, 1816) have been settled by the Third Auditor since July 1, 1818, all other "half-pay pensions to widows and orphans" were settled by and paid under direction of the Paymaster-General to June 1, 1821 (the original claims are filed in the Third Auditor's Office), the accounts of the agents paying them being rendered to the Second Auditor either directly or through the Office of the Paymaster-General.

After June 1, 1821, under authority of the Secretary of War, the Third Auditor adjudicated all claims of widows and orphans for half-pay pensions under the series of acts ending April 20, 1818, to 1867. All cases adjudicated or partly adjudicated by the Paymaster-General prior to June 1, 1821, in which no payment had been made, were paid in full through the Third Auditor's Office, and those partly paid were completed through the Office of the Second Auditor.

The books and records showing all payments to "army pensioners" (including half-pay pensions to widows and orphans) made since March 4, 1789, are in the custody of the Auditor for the Interior Department; but no vouchers paid prior to July 1, 1818, are on file in his office (with the exception of half-pay pensions paid through the Pay Department of the Army from May, 1814, to March, 1818). The greater part of the "invalid" vouchers paid prior to that date were burned by the British in August, 1814, and the remainder—including "half pay" in bounty-land cases—were burned in the Treasury fire in 1833, they being at this time in the custody of the Register of the Treasury.

"Invalid" or "military" pensions, as well as "half-pay" pensions to minors who relinquished claim to bounty land under section 2, act April 16, 1816, were, prior to June 30, 1818, paid from the civil appropriation under the direction of the Secretary of the Treasury.

"Half-pay" pensions to widows and orphans, with the exception of the class named above, were during the same period paid from the military appropriation—estimated for as "half-pay pensions"—and included under the head of "Pay of the Army," and disbursed by the Paymaster-General under the direction of the Secretary of War.

From and after June 30, 1818, the entire pension appropriation—with the exception of the indefinite appropriation for "full pay" (under the act of May 15, 1828)—was disbursed under the direction of the Secretary of War until the establishment of the Department of the Interior in 1849.

The execution of the act of June 7, 1832, extending the provisions of the act of 1828, was transferred immediately after its passage to the Secretary of War; and in March, 1835, the execution of the act of May 15, 1828, was also transferred to the War Department, and the claims under both acts placed under the jurisdiction of the Commissioner of Pensions.

PENSION AGENTS.

An examination of the laws as well as of the records of the Pension Bureau shows that pension agents were first constituted by the act of Congress approved April 24, 1816, section 4 of which provided that the Secretary of the Department of War be authorized and required to appoint some fit and proper person in those States and Territories where there was no commissioner of loans, and also in the district of Maine, to perform the duties in these States and Territories and in said district, respectively, relating to pensions and pensioners, which were then required of said commissioners in their respective States.

Subsequent legislation on the subject of pension agents was directed mainly to the method and amount of their compensation, and to the form and amount of their bonds, until the act of February 5, 1867, was passed. This act vested in the President of the United States the appointment of all pension agents. It also authorized him to establish agencies for the payment of pensions wherever, in his judgment, the public interests and the convenience of the pensioners required. The act also provided that pension agents should give bond, with good and sufficient sureties, in such form and for such amount as the Secretary of the Interior might approve. This act is the foundation upon which is based the system of paying pensions which is now in successful operation.

MODES OF PROOF AND REGULATIONS.

In March of 1792 Congress passed an act providing pensions proportionate to the extent of disability, and devolved upon the circuit courts of the United States (where the invalids resided) the duty of examining the proofs and determining the amounts, and to certify the same to the Secretary of War, who, under certain conditions, should

put the name of the applicant on the pension list. Every circuit judge (except one, who did not have the case before him) was of the opinion that the law was unconstitutional and void, and that they could not proceed—

1. Because the business directed by the act was not of a judicial nature and forms no part of the powers vested by the Constitution in the courts of the United States.

2. Because, if upon that business the court should proceed, its judgments—for its opinions are its judgments—might, under the same act, have been revised and controlled by the legislature and by an officer in the executive department. This question is fully discussed in *Hayburn's Case*. (2 Dallas, 409.) The question then was whether the decisions of the judges as commissioners out of court was a legal adjudication. To test this, one Yale Todd brought an amicable suit before the Supreme Court, on a case stated at February term, 1794, which was decided at the same term, the court holding that the power conferred on the circuit courts by the act of 1792 was not judicial power, within the meaning of the Constitution, and therefore could not be lawfully exercised by the courts, and that, as the act intended to confer the power on the courts as a judicial function, it could not authorize the judges to exercise that power out of court as commissioners; and this decision, says Chief Justice Taney (note to *United States v. Ferreira*, 13 Howard, 52), has ever since been regarded as constitutional law, and followed by every Department of the Government.

And it is now so well settled that the administration of the pension laws is fully vested in the Commissioner of Pensions, and in the Secretary of the Interior as the final appellate power, that the courts have uniformly refused to interfere with those officers, who are not subject to the control of the courts in the exercise of the discretion which the law reposes in them as part of their official functions. (7 Wall., 347; 14 Peters, 499; 116 U. S., 423.)

The first pension act confers authority on the President to establish regulations; and, on the 23d day of December, 1817, regulations were established by the War Department governing the adjudication of pension claims. Precisely what those regulations were can not now be ascertained, because they, with other valuable archives of the Government, were long since destroyed by fire. There can scarcely be a doubt, however, that they formed the groundwork of the present regulations governing the adjudications of pension claims, amplified and enlarged as experience has shown necessary.

PENSIONERS ON THE ROLL.

It is not feasible to determine how many pensioners were on the roll prior to July 1, 1861.

Since July, 1861, up to June 30, 1896, however, 2,145,569 original

claims have been filed in the Pension Office, and of these 1,476,565 have been allowed.

On June 30, 1896, there were on the roll pensioners of all classes to the number of 970,678.

Of these pensioners but 3,781 reside in foreign countries and the balance in the States and Territories of the United States.

AMOUNTS PAID OUT.

Since July 1, 1860, to June 30, 1896, the sum of \$1,997,515,154.72 has been paid out on account of pensions.

PENSION DIGEST.

EXPLANATORY NOTE

AS TO ABBREVIATIONS AND RECORDS AND PUBLICATIONS.

L. B. P	Letter Book Pensions, being the early records of the Interior Department relative to pension decisions by the Secretary, and dating from March 10, 1849.
P. D. (o. s.).....	Pension Decisions (old series), being the departmental records (vols. 1 to 34) of pension decisions by the Secretary and dating from July 5, 1872, to July 23, 1887.
L. B. Aa. (Ca, Xb, etc.)....	Press Letter Books of decisions from January 1, 1887, to June 6, 1890.
P. D.....	Pension Decisions, published (vols. 1 to 8), dating from February 6, 1886. (Current series.)
L. B.....	Current series of Press Letter Books, dating from June 6, 1890, and numbered 1 to 233, et seq.
L. B. Misc	Letter Book, Miscellaneous, being the miscellaneous letter books, numbered, from the organization of the Interior Department.
Fee Books.....	} Press Letter Books, numbered, containing decisions in fee cases, and dating from July, 1888.
Fee P. L. Bk	
Op.....	Opinions of the Attorney-General.
Pension Laws, etc. (1849)...	A compilation, made in 1849 by the Commissioner of Pensions, of pension laws and decisions prior to that year.
Sec	Secretary.
Asst. Sec.....	Assistant Secretary.
Actg. Sec	Acting Secretary.
Atty. Gen.....	Attorney-General.
M. & N.....	Mayo & Moulton's Pension and Bounty Land Laws, and decisions relative to pensions and bounty lands; published in 1861.
C. Cls. R.....	Court of Claims Reports.
S. C.....	Same case.

ABANDONMENT.

1. Of stepchildren.
2. When minors are entitled on widow's abandonment of them.
3. Functions of Commissioner.

1. Of stepchildren.

Section 4706, Revised Statutes, does not apply to a widow who abandons the minor children of her husband by a former wife, but to a widow who abandons her own children by him. *Minors of Charles Franklin* (Asst. Sec. Reynolds), 7 P. D., 159.

2. When minors are entitled on widow's abandonment of them.

Where satisfactory evidence has been presented to the Commissioner of Pensions that a widow has abandoned the care of the minor children of a deceased soldier, "or is an unsuitable person, by reason of immoral conduct, to have the custody of the same," such children may be pensioned in the same manner as if no widow had survived such soldier, regardless of a certificate of a probate court as to such facts. Citing *Minors of Alfred S. Hamilton*, 7 P. D., 437 (see MINORS). *Charles and Caroline McElhaney* (Asst. Sec. Reynolds), 8 P. D., 42.

3. Functions of Commissioner.

The action authorized by section 4706, Revised Statutes, to be taken by the Commissioner is not predicated upon any motion or discretion of his own, but only upon the procedure of a probate court, and is merely a diversion of payment of the widow's pension during the children's minority, and not a forfeiture of her pensionable status. *Widow of James Lingers* (Asst. Sec. Bussey), 4 P. D., 287.

Modified; 7 P. D., 437, and 8 P. D., 42.

The words "on presentation of satisfactory evidence thereof to the Commissioner of Pensions," as used in section 4706, Revised Statutes, import that the Commissioner's function, in cases arising thereunder, is not merely executive, but judicial as well. *Charles and Caroline McElhaney* (Asst. Sec. Reynolds), 8 P. D., 42.

See also ADULTEROUS COHABITATION; ATTORNEYS; MINORS.

ABSENCE WITHOUT LEAVE.

See FURLOUGH; LINE OF DUTY.

ACCIDENTAL INJURY.

See LINE OF DUTY.

ACCOUNTING OFFICERS OF THE TREASURY.

See ACCRUED PENSION (Reimbursement); CONSTRUCTION OF LAWS; JURISDICTION.

ACCRUED PENSION.

1. Defined.
2. Rules governing.
3. Not assets.
4. Where no application is filed.
5. What claims to be considered pending.
6. What claims to be considered not pending.
7. When widow is entitled, under old laws.

8. Act of June 19, 1840, application of.
9. Act of July 27, 1868, application of.
10. Under section 4718, Revised Statutes—Widow pensioners.
 - (a) *On death of widow while claim for accrued pension is pending.*
 - (b) *Applies to male pensioners only.*
11. Arrears under acts of January 25 and March 3, 1879.
12. Legal representatives of widow not entitled on her death.
13. When minors not entitled to widow's accrued pension.
14. War of 1812 claimant entitled.
15. Minor pensioner.
 - (a) *Death of one of several minor claimants.*
 - (b) *Increase on account of minors.*
 - (c) *Minor child's child not entitled.*
16. Dependent mother's accrued pension.
17. Pensioners under act of June 27, 1890.
18. Pensioners under act of July 27, 1892.
19. Under act of March 1, 1889.
 - (a) *Distinguished from section 4718, Revised Statutes.*
 - (b) *Provision as to checks not retroactive.*
 - (c) *Proviso refers to male pensioners only.*
 - (d) *Conditions governing payment to legal representatives.*
 - (e) *Minors are those under 16 years of age.*
 - (f) *Applies generally irrespective of date of certificate.*
 - (g) *Death must have been subsequent to passage of act.*
20. May be paid on restoration under section 4719, Revised Statutes.
21. Where pensioner was suspended under act of May 1, 1830.
22. Acts of March 1, 1889, and June 30, 1890, are still in force.
23. Act of March 1, 1889, repealed by act of March 2, 1895.
24. No accrued pension under special act.
25. Reimbursement on account of funeral expenses—Jurisdiction.
 - (a) *Reimbursement only as to invalid pensioners.*
 - (b) *Contra: law includes widow pensioners.*
 - (c) *Application for pension must have been filed.*
 - (d) *Municipal corporations may not be reimbursed.*
 - (e) *Claimant's statements should be corroborated.*
 - (f) *Under act of March 2, 1895.*
 - (g) *Under widow's claim for arrears.*

1. Defined.

The term "accrued pension," as used in section 4718, Revised Statutes, means the amount of money unpaid by the Government to which a pensioner or a person who had a valid claim for pension pending was entitled at the time of his death. *Atty. Gen. Garland*, 19 Op., 1.

Section 4718 is superseded by act of March 2, 1895.

2. Rules governing.

Accrued pension is not governed by any rule of descent or inheritance except that prescribed by Congress, and payment can be made only to those or for the benefit of those to whom the law may give it. *Atty. Gen. Mason*, 4 Op., 504.

3. Not assets.

Accrued pension does not constitute a part of the assets of a deceased pensioner, and is not devisable. *Executor of Ann B. Johnson* (Sec. Cox), 7 L. B. P., 69.

4. Where no application is filed.

If soldier died without filing application for pension there is no accrued pension from his discharge to death, though he was insane. *Mary Uhrich* (Sec. Teller), 9 P. D. (o. s.), 354.

See *Joseph H. Cook*, SUBTITLE 11.

5. What claims to be considered pending.

Where a soldier's claim for pension stands rejected at the time of his death, on the ground that the records of the War Department show a certain fact on which alone such rejection is based, and he applied to said Department for correction of such record, which is subsequently determined by that Department to have been erroneous and is corrected accordingly, such claim shall be considered as pending within the meaning of section 4718, Revised Statutes, and of the act of March 2, 1895, although it was never formally reopened during his lifetime, nor any application made by him to the Bureau of Pensions to have it reopened. *Jacob Wolhart* (Asst. Sec. Reynolds), 8 P. D., 226.

When the claim of a soldier for pension or increase of pension was rejected by the Commissioner of Pensions during his life, and he died so soon thereafter that he had no opportunity to ask for a reconsideration of the case or to take an appeal to this Department, the claim may be reopened after his death and prosecuted by or on behalf of the widow or children.

When a soldier's claim for pension stands rejected by the Bureau of Pensions at the time of his death on the ground that the records of the War Department show a certain fact, upon which alone rejection is based, which is subsequently determined by that Department to have been erroneous and is corrected accordingly, such claim will be considered as pending within the meaning of the act of March 2, 1895. *Henry Groppe* (Asst. Sec. Reynolds), 8 P. D., 293.

6. What claims to be considered not pending.

Where a soldier's claim stands rejected at the time of his death on another than the sole ground that the records of the War Department show a certain fact or facts, and he made no effort within a reasonable time to reopen it, it shall be considered as not pending within the meaning of section 4718, Revised Statutes, or of the act of March 2, 1895. *Jacob Wolhart* (Asst. Sec. Reynolds), 8 P. D., 226.

6. What claims to be considered not pending—Continued.

When the claim of a soldier for pension or for increase of pension was rejected prior to his death, and no appeal was taken by him from such action, and no motion for reconsideration made, and when, from the lapse of time and the circumstances of the case it may reasonably be inferred that the claim had been abandoned, it must be held that at his death he had no claim pending and that his widow is not entitled under the act of March 2, 1895, which is the only law now in force relating to the payment of accrued pension, to reopen and prosecute such rejected invalid claim. Each claim of this class must, however, be adjudicated on the facts in that particular case. *Henry Groppe* (Asst. Sec. Reynolds), 8 P. D., 293.

Where soldier's claim was rejected and notification of the rejection sent to him seven months before his death, and he took no steps towards having the same reopened, and filed no appeal, and no mental disqualification for taking such action is shown: *Held*, That he had reasonable time within which to manifest an intent to prosecute the claim further, and, having failed to do so, he must be held to have abandoned it, and it was therefore not a "pending" claim at the time of his death within the meaning of section 4718, Revised Statutes, and the act of March 2, 1895. *Briggs Soper* (Asst. Sec. Reynolds), 8 P. D., —.

7. When widow is entitled, under old laws.

On the death of a soldier after completion of the proof in his claim for invalid pension his widow is entitled to the accrued pension due under such claim. *Communication to Augustus Haviland* (Sec. Cox), 6 L. B. P., 512.

8. Act of June 19, 1840, application of.

The act of June 19, 1840, has no application to pensions allowed under the act of July 14, 1862, or under subsequent acts. *Sarah A. Bell* (Asst. Sec. Bussey), 6 P. D., 129.

9. Act of July 27, 1868, application of.

Section 9 of the act of July 27, 1868, does not apply to cases where a widow survives. *J. D. Ferris* (Sec. Delano), 8 L. B. P., 453.

10. Under section 4718, Revised Statutes—Widow pensioners.

In view of the Attorney-General's opinion of August 10, 1876, holding that the words "pensioner" and "person entitled to pension" in section 4718, Revised Statutes, include widow pensioners, in connection with a claim for the payment of the

10. Under section 4718, R. S.—Widow pensioners—Continued.

expenses of the last sickness and burial of a pensioner who dies leaving sufficient accrued pension for such a payment, the claim for reimbursement in this case is allowed; overruling, to this extent, prior opinion of Actg. Sec. Gorham, 3 P. D. (o. s.), 373. *Sarah Kilpatrick* (Sec. Chandler), 3 P. D. (o. s.), 404.

Superseded by act March 2, 1895.

See also SUBTITLES 10 *a*, 10 *b*, 25 *a*, and 25 *b*.

In case of the death of a widow who is in receipt of a pension, the pension which accrued from the date of the last payment to her can be paid to her children who are under 16 years of age at the date of her death. It can not be paid to them if they are over the age of 16 years at the date of their mother's death. *Minors of John N. Hotchkiss* (Asst. Sec. Reynolds), 8 P. D., —.

(a) On death of widow while claim for accrued pension is pending.

T. died while his application for pension was pending, leaving a widow and a daughter under 16 years of age; the mother died after the daughter attained the age of 16 years, and subsequently the pension was allowed and a certificate therefor issued: *Held*, That under section 4718, Revised Statutes, the daughter is entitled to the pension which had accrued up to the death of the father. *Atty. Gen. MacVeagh*, 17 Op., 190.

(b) Applies to male pensioners only.

Section 4718, Revised Statutes, applies to the accrued pension of those only who are male pensioners, or male applicants for pension, under sections 4692 and 4693, Revised Statutes, and not to widow, minor children, or dependent relative pensioners or applicants for pension. Citing *Minors of William Brady*, 3 P. D., 90; *Minors of John A. McAlister*, *ib.*, 318; also 17 Op. Atty. Gen., 190; and the contrary opinion of Solicitor-General Phillips, 15 Op. Atty. Gen., 591, construing together the acts of July 27, 1868, section 9, and March 3, 1873, section 25, is deemed erroneous. Rescinding Ruling 116 (January 12, 1877), and repromulgating Ruling 110 (June 30, 1876). *Children of Richard Martin* (Asst. Sec. Bussey), 6 P. D., 107.

See SUBTITLES 25 *a*, 25 *b*.

11. Arrears under acts of January 25 and March 3, 1879.

The widow is entitled to accrued pension between the date of soldier's discharge and date of his death, where he died, during the pendency of his claim, prior to passage of the act of January 25, 1879, under said act and the act of March 3, 1879, and section 4718, Revised Statutes, though he filed his claim more than five years after discharge. *John W. Russell* (Sec. Schurz), 5 P. D. (o. s.), 470.

11. Arrears under acts of January 25 and March 3, 1879—Cont'd.

Where a soldier at the time of his death had a claim for invalid pension pending, on account of an injury to his back and loins, which was subsequently rejected, and his widow was pensioned on account of his death from chronic diarrhea, it was held, that inasmuch as the soldier had not alleged, in his declaration, any disability from that disease, his widow was not entitled to pension for any period prior to the date of his death. *William F. Blankenbaker* (Sec. Kirkwood), 9 P. D. (o. s.), 86.

A soldier died June 20, 1875, leaving a pending claim which was allowed in September following, pension dating from March 26, 1875. On appeal from rejection of the claim of his minor children for arrears from date of discharge, under acts of January 25 and March 3, 1879, the Department held that said minors were not entitled to such arrears, but, as the soldier would have been entitled thereto had he lived, his widow is equally entitled, under section 4718, Revised Statutes. *Joseph H. Cook* (Sec. Teller), 13 P. D. (o. s.), 44.

12. Legal representatives no title on death of widow claimant.

If a widow dies without having received any part of the pension to which she may have been entitled, all right and title to such pension at once passes from her and vests in the soldier's children who were minors at the time of his death, and her legal representatives have no title to pension accrued under her pending claim. *Sophia Moritz* (Asst. Sec. Bussey), 4 P. D., 50.

13. When minors not entitled to widow's accrued pension.

If the minor children of a deceased soldier can have no valid right to pension during the life of the soldier's widow, and, at the date of her death, they had attained the age of 16 years, then no title can be vested in them to the widow's accrued and unpaid pension. *Mary J. Hix* (Asst. Sec. Bussey), 5 P. D., 79.

Overruled; 8 P. D., 111.

14. War of 1812 claimant entitled.

The widow of a deceased claimant for pension under the act of February 14, 1871, is entitled to the accrued pension due under his claim, under said act, pending at the time of his death. *J. D. Ferris* (Sec. Delano), 8 L. B. P., 453.

The heirs of a deceased soldier of the war of 1812 are not entitled to accrued pension other than as specified in section 4718, Revised Statutes, the act of March 3, 1873, having repealed all acts and parts of acts inconsistent or in conflict therewith. *George Lemasters* (Sec. Schurz), 5 P. D. (o. s.), 479.

15. Minor pensioner.

If certificate issues to minor pensioner who dies before payment thereunder, no one is entitled to the accrued pension. *Minor of Austin James* (Sec. Cox), 7 L. B. P., 179.

(a) Death of one of several minor claimants.

Section 4718, Revised Statutes, has no application to a claim by several minor children entitled to pension one of whom dies while the claim is pending; but the surviving children are entitled to the full amount of the pension. *Minors of John S. Shults* (Asst. Sec. Hawkins), 2 P. D., 298, 355; *Minors of William Brady* (Asst. Sec. Bussey), 3 P. D., 90.

(b) Increase on account of minors.

When one of several cominor pensioners dies, no one is entitled to the accrued \$2 additional pension allowed on its account; but title to such lapses. *Minors of John A. McAlister* (Asst. Sec. Bussey), 3 P. D., 318.

(c) A minor child's child not entitled.

Section 4718, Revised Statutes, vests title to accrued pension in the widow or minor child of the soldier only, and a minor child of the soldier's child has no pensionable status. *Minors of Richard Martin* (Asst. Sec. Bussey), 5 P. D., 268.

See s. c., 6 P. D., 107; modified, 7 P. D., 229.

16. Dependent mother's accrued pension.

The father of a deceased soldier has no title to accrued pension due under the mother's claim pending at her death. *Father of William A. Mason* (Asst. Sec. Bussey), 4 P. D., 176.

17. Pensioner under the act of June 27, 1890.

Accrued pension of a pensioner under the act of June 27, 1890, is payable under the act of June 30, 1890, and not under section 4718, Revised Statutes. *Frances H. Collins and Eliza Gilliland* (Asst. Sec. Bussey), 6 P. D., 257.

Overruled; see decision following.

The provisions of section 4718, Revised Statutes, are applicable to the act of June 27, 1890, and authorize the widow or minor children of a deceased soldier to prosecute his pending claim under said act, and to receive the accrued pension to the date of the death of such soldier. Cases of Richard Martin, Collins, and Gilliland are overruled, in so far as they announce a contrary rule, or are in conflict with this decision. *Adolph Bernstein* (Asst. Sec. Reynolds), 7 P. D., 229.

18. Pensioners under act of July 27, 1892.

The provisions of section 4718, Revised Statutes, are applicable to the act of July 27, 1892, and authorize the widow of a deceased soldier to prosecute his pending claim under said act and receive the accrued pension to the date of his death. *Rachel M. Hix* (Asst. Sec. Reynolds), 7 P. D., 259.

19. Under act of March 1, 1889.

The act of March 1, 1889, applies (1) to cases where a check has been issued, making its payment to the person or persons mentioned in said act mandatory, and (2) to cases where a pensioner dies, leaving no widow or minor child, before any payment is made under his old certificate, a certificate having been issued, in which cases payment is discretionary with the Secretary. *A. Breckenridge* (Asst. Sec. Bussey), 6 P. D., 15

(a) Distinguished from section 4718, Revised Statutes.

The act of March 1, 1889, applies only to those cases where certificate issued before the beneficiary's death; section 4718, Revised Statutes, to cases where the claim is yet pending and unadjudicated. *Margaret Teed* (Asst. Sec. Bussey), 4 P. D., 1.

(b) Provision as to checks has no retroactive effect.

The act of March 1, 1889, relative to checks drawn by a pension agent and mailed to pensioner's address prior to his decease has no retroactive effect, but applies only to those cases wherein the pensioner has died subsequent to the date of the act. *William McFarland* (Asst. Sec. Bussey), 5 P. D., 186.

A dependent mother who was a pensioner died after executing her pension voucher and before the check for pension was mailed to her address: *Held*, That under the act of March 1, 1889, the executor of her estate has no title to said check. *Hannah P. Foster* (Asst. Sec. Reynolds), 7 P. D., 125.

(c) Proviso refers to male pensioners only.

The act of March 1, 1889, does not apply to a widow's or a mother's pension. *Grandchild of Minerva Stone* (Asst. Sec. Bussey), 4 P. D., 301.

See also SUBTITLE 19g.

- The act of March 1, 1889, plainly refers to soldier and not to widow pensioners. *Betsy C. Nye* (Asst. Sec. Bussey), 4 P. D., 303.

The proviso of the act of March 1, 1889, refers to male pensioners and not to a widow pensioner. *Child of Daniel C. Harkney* (Asst. Sec. Bussey), 6 P. D., 34.

The act of March 1, 1889, conferring discretionary power upon the Secretary of the Interior to pay accrued pension to a pensioner's legal representatives is not applicable to a mother's pension. *Betsey White* (Asst. Sec. Reynolds), 7 P. D., 567.

19. Under act of March 1, 1889—Continued.

(d) Conditions governing payment to legal representatives.

The proviso of the act of March 1, 1889, applies only where the pensioner leaves at his death no widow or minor child, and where certificate has been issued and pensioner named therein has died before payment. Citing *Margaret Teed*, 4 P. D., 1. *Catherine Kelly* (Asst. Sec. Bussey), 4 P. D., 324.

(e) Minors are those under 16 years of age.

The minors referred to in the act of March 1, 1889, are those under 16 years of age. *Widow of William Bell* (Asst. Sec. Bussey), 6 P. D., 129.

(f) Applies generally, irrespective of date of certificate.

The proviso in the act of March 1, 1889, authorizing payment to a deceased pensioner's legal representatives, in certain contingencies, of the accrued pension due on his pension certificate at the time of his death, is to be construed as applicable to all outstanding pension certificates, whether issued before or since the passage of the act. *Atty. Gen. Miller*, 19 Op., 359.

This act applies not only to cases where certificate issued subsequent to its passage, but also to cases where it issued prior thereto; and applies also only to those who died subsequent, and not prior, to its passage. Quoting opinion of Attorney-General, 3 P. D., 430. *Grandchild of Minerva Stone* (Asst. Sec. Bussey), 4 P. D., 301.

(g) Death must have been subsequent to passage of act.

The pensioner must have died since the passage of the act of March 1, 1889, to entitle his legal representatives to claim accrued pension thereunder. *Atty. Gen. Miller*, 19 Op., 359.

This Department will conform its action to the opinion of the Attorney-General (to whom the matter was submitted), that the proviso to the act of March 1, 1889, has no applicability to a case in which the pensioner, or person entitled to pension, died prior to the date of the act. *Sophia Moritz* (Asst. Sec. Bussey), 4 P. D., 50.

The act of March 1, 1889, as to payment of accrued pension, does not apply to the case of a mother pensioner (or entitled to pension) who died prior to the passage of said act. *Father of William A. Mason* (Asst. Sec. Bussey), 4 P. D., 176.

The act of March 1, 1889, does not apply to a pensioner who died prior to its passage, nor to dependent parent pensioners. *Communication; Elizabeth Wise* (Asst. Sec. Bussey), 4 P. D., 281.

The exercise of the Secretary's discretionary power under

19. Under act of March 1, 1889—Continued.

(g) **Death must have been subsequent to passage of act—Continued.**

the act of March 1, 1889, with reference to accrued pensions, is limited to the extent that a pension certificate shall have issued and that the pensioner dies before payment; and also by the word "hereafter," implying a fulfillment of the conditions to be necessary after the passage of said act. *Mary Masterson* (Asst. Sec. Bussey), 5 P. D., 17.

20. May be paid on restoration under section 4719, Revised Statutes.

When a pensioner's name had been stricken from the roll, under section 4719, Revised Statutes, for failure to claim his pension, upon his death it is within the discretion and power of the Secretary of the Interior to pay the accrued pension to his children as his legal representatives, under the act of March 1, 1889. *August Schroder* (Asst. Sec. Bussey), 5 P. D., 357.

21. Where pension was suspended under act of May 1, 1820.

Where pension was suspended under the act of May 1, 1820, because of nonindigence of the pensioner, as shown by a schedule of his property, and the evidence shows such suspension was erroneous, there is no law under which the pensioner's name might be restored to the roll after his death and the accrued pension from date of suspension paid to his grandson. *Grandson of John Burnham* (Asst. Sec. Bussey), 4 P. D., 93.

22. Acts of March 1, 1889, and June 30, 1890, still in force.

The general appropriation acts of March 1, 1889, and June 30, 1890, did not become inoperative, as to accrued pension, at the expiration of the fiscal years for which said acts made appropriations, but are still in force as to such pension. *Sarah A. Bell* (Asst. Sec. Bussey), 6 P. D., 129.

23. Repeal of act of March 1, 1889, by act of March 2, 1895.

The law relating to the payment of accrued pension, in force at the date of the action of the Bureau of Pensions from which this appeal was taken, having been repealed, and a new law upon the subject enacted by Congress, and approved March 2, 1895, entitled "An act to provide for the payment of accrued pensions in certain cases," the papers are returned that appropriate action may be taken in the case under the provisions of said act, and the appeal is dismissed. *Malissa Ray* (Asst. Sec. Reynolds), 7 P. D., 556.

The act of March 2, 1895, was intended to govern the allowance and payment of accrued pension in all claims of deceased applicants adjudicated subsequent to September 28, 1892, with-

23. **Repeal of act March 1, 1889, by act March 2, 1895**—Cont'd. out regard to whether the applicant died before or after that date. *Marie E. Brown* (Asst. Sec. Reynolds), 8 P. D., —.

The act of March 1, 1889, giving the Secretary of the Interior discretionary power to pay the accrued pension due any pensioner at his death, in case no widow or child survived such pensioner, to his legal representatives, was repealed by the act of March 2, 1895; and from and after the approval of said last-mentioned act all such claims must be adjudicated thereunder, whether filed before or since its passage. *Adolph Spraggle* (Asst. Sec. Reynolds), 8 P. D., 51.

24. **No accrued pension under a special act.**

The pension granted the widow of President Polk by a special act of Congress, which act does not contain any provision whereby the pension granted may be received by any other person, was limited to the said widow, and upon her death can not be inherited by any person, nor has the Secretary of the Interior any discretionary power to pay the accrued pension to the legal representatives of such pensioner. *In re Mrs. George W. Fall, as heir of Mrs. James K. Polk* (Asst. Sec. Bussey), 5 P. D., 212.

25. **Reimbursement as to funeral expenses, etc.—Jurisdiction.**

The Commissioner of Pensions, and not the accounting officers of the Treasury, is to construe the law relating to the reimbursement for the last sickness and burial of a deceased pensioner, and to direct the pension agents as to the amount that shall be paid to any class of pensioners, or to whom pensions are to be paid. The certificate and the Commissioner's order as to the payment, when sanctioned by the Secretary of the Interior, are binding upon the Comptroller and Auditor. *Atty. Gen. Brewster*, 17 Op., 339.

The Commissioner of Pensions is not vested with power to audit and adjust accounts for the last sickness and burial of deceased pensioners arising under section 4718, Revised Statutes. This power belongs only to the proper accounting officers of the Treasury by virtue of section 236, Revised Statutes. *Atty. Gen. Brewster*, 17 Op., 440.

- (a) **Reimbursement only as to invalid pensioners.**

The provisions of section 4718, Revised Statutes, relative to the reimbursement of the expenses of the last sickness and burial of a deceased pensioner out of the accrued pension of such pensioner are only applicable to the case of an invalid pensioner, or one entitled to a pension, and not to the accrued

25. Reimbursement as to funeral expenses, etc.—Continued.

(a) Reimbursement only as to invalid pensioners—Continued.

pension of a widow, minor, or dependent relative. *Sarah Kilpatrick* (Actg. Sec. Gorham), 3 P. D. (o. s.), 373.

Contra: See decision following.

(b) Section 4718, Revised Statutes, includes widow pensioners.

The words "pensioner" and "person entitled to a pension" in section 4718, Revised Statutes, include a widow pensioner: *Held*, accordingly, that where a widow pensioner died leaving "accrued pension," no child surviving, the person who bore the expenses of the last sickness and burial of the deceased is entitled to reimbursement from such pension in case sufficient assets to meet such expenses were not left. *Solicitor-Gen. Phillips*, 15 Op., 591.

See SUBTITLE 10.

(c) Application for pension must have been filed.

There can be no reimbursement for the expenses of the last sickness and burial of a minor child who died without having filed an application for the pension to which it was entitled. *Minor of John A. Howard* (Sec. Delano), 1 P. D. (o. s.), 267.

(d) Municipal corporations may not be reimbursed.

A town is not entitled to reimbursement for expenses of last sickness and burial of a pension claimant who dies during pendency of his claim. *Daniel Dore* (Sec. Schurz), 5 P. D. (o. s.), 159.

A municipal corporation that buried a soldier as a pauper, and cared for him as such during his last sickness, is not thereby entitled to prosecute said soldier's claim, pending at the time of his death, for the purpose of reimbursing itself for the expense of said soldier's burial out of the accrued pension. *Edwin Haskins* (Asst. Sec. Reynolds), 8 P. D., 40.

(e) Claimant's statements should be corroborated.

The claimant's statements in a claim for reimbursement should be corroborated by the affidavits of two credible witnesses. *Elizabeth Wells* (Sec. Chandler), 4 P. D. (o. s.), 65.

(f) Reimbursement under act of March 2, 1895.

The act of March 2, 1895, entitled "An act to provide for the payment of accrued pensions in certain cases," makes express provisions for the reimbursement of the person who bore the expenses of the last sickness and burial of a deceased widow pensioner or applicant for pension who left surviving no minor child of pensionable age at the date of her death,

25. Reimbursement as to funeral expenses, etc.—Continued.**(f) Reimbursement under act of March 2, 1895—Continued.**

out of the accrued pension which was or might be allowed such deceased pensioner to date of her death, provided she did not leave sufficient assets to meet such expense. *Malissa Ray* (Asst. Sec. Reynolds), 7 P. D., 556.

The act of March 2, 1895, may be considered as a legislative construction of section 4718, Revised Statutes, intended to take the place of the departmental construction of September 28, 1892. Under the construction of the law prior to that date, reimbursements for the funeral expenses of a deceased mother pensioner or applicant for pension might be made from her accrued pension. The act of March 2, 1895, confirmed this construction and made it effective from September 28, 1892. *Mother of George Kerr* (Asst. Sec. Reynolds), 8 P. D., —.

(g) Reimbursement under widow's claim for arrears.

An invalid pensioner having died, prior to January, 1879, leaving a widow but no minor children, said widow filed a claim for arrears alleged to be due under acts of January 25 and March 3, 1879; such claim was allowed subsequent to her death: *Held*, That the expenses of the last sickness and burial of both the pensioner and his widow may be reimbursed from the amount found due under the said claim for arrears. *George and Annie Wolf, in re John and Eliza Smith* (Sec. Kirkwood), 8 P. D. (o. s.), 342.

See also COMMENCEMENT; DECLARATIONS; DISLOYALTY; FEE; JURISDICTION; MISTAKE; REVOLUTIONARY WAR; SUSPENSION.

ACCRUED RIGHTS.

See ACCRUED PENSION; BOUNTY LAND; VESTED RIGHTS.

ACKNOWLEDGMENTS.

See FEE CONTRACT; MINORS.

ADDITIONAL PAYMASTERS.

See SERVICE.

ADDITIONAL PENSION.

See COMMENCEMENT; INCREASE.

ADJUDICATION.

See PRACTICE.

ADMINISTRATORS.

Where a pensioner failed during his lifetime to make any application for the benefit of the sixth section of the act of July 27, 1868, dating pension from discharge, his administrators may not apply therefor after his death. *Administrator of Louis A. Saunders* (Sec. Cox), 7 L. B. P., 45.

See also ATTORNEYS; BOUNTY LAND.

ADULTEROUS COHABITATION.

1. Statutory term construed.
2. Act of August 7, 1882, is not retroactive.
3. Act does not apply to applicants for pension.
4. Act applies to both pensioners and applicants.
5. Act does not apply to mothers.
6. Act may apply to mothers.
7. Evidence and proof.
8. Principle involved.
9. Burden of proof.
10. As affecting title under act of June 27, 1890.

1. **The statutory term construed.**

The words "open and notorious adulterous cohabitation," as used in the act of August 7, 1882, are descriptive merely of acts which would deprive a widow of her pension, and mean that any widow pensioner who is guilty of immoral and licentious acts, of an open and adulterous character, should forfeit her pension. *Mary E. Boeke* (Asst. Sec. Hawkins), 1 P. D., 427.

The phrase "adulterous cohabitation" is not necessarily confined to the meaning given to the word in criminal decisions and in criminal jurisprudence; but, as used in the act of August 7, 1882, must be regarded as descriptive of acts of immorality and lewdness. *Minerva Beede* (Asst. Sec. Hawkins), 2 P. D., 119.

The words "adulterous cohabitation of a widow who is a pensioner" are not used in said act in their technical but their popular signification, and apply to a widow who openly and notoriously lives with a man upon terms of illicit intimacy. *Alice Gray* (Asst. Sec. Reynolds), 7 P. D., 134.

2. **Act of August 7, 1882, is not retroactive.**

The act of August 7, 1882, does not affect a widow whose adulterous cohabitation ceased before the passage of the act. *Elsie A. Parker* (Asst. Sec. Joslyn), 15 P. D. (o. s.), 49.

Contra: *Minerva Beede* (Asst. Sec. Hawkins), 2 P. D., 119.

The provision in the act of August 7, 1882, relating to adulterous cohabitation has no effect to deprive a widow of her

2. Act of August 7, 1882, is not retroactive—Continued.

pension if the adulterous cohabitation ceased before the passage of the act. *Sarah E. West* (Asst. Sec. Bussey), 3 P. D., 115.

The decision in the case of *Sarah E. West* (3 P. D., 115), holding that the provisions of the act of August 7, 1882, relative to adulterous cohabitation have no retroactive effect, and can not be held to operate to deprive a widow of her pension if such cohabitation ceased before the passage of the act, is affirmed. *Caroline Knappenberger* (Asst. Sec. Bussey), 3 P. D., 263.

The act of August 7, 1882, has no application to adulterous cohabitation prior to its passage. Citing *Sarah E. West*, 3 P. D., 115. *Sophia Lingers* (Asst. Sec. Bussey), 4 P. D., 287.

The legal authority to make forfeiture of the widow's pension the result of such "adulterous cohabitation" did not exist prior to the passage of the act of August 7, 1882, and the forfeiture clause of said act has no retrospective bearing. *Matilda Payne* (Asst. Sec. Bussey), 5 P. D., 161.

The act of August 7, 1882, is not retroactive, nor does it apply to a widow who is not a pensioner, but only an applicant for a pension. *Cynthia A. Evans* (Asst. Sec. Bussey), 5 P. D., 188.

Overruled in part: 7 P. D., 207.

Claimant's illicit relations having terminated prior to the passage of the act of August 7, 1882, and not being a pensioner at that time, said act is not applicable to her case, as the same has no retrospective bearing. *Harriet Ford* (Asst. Sec. Bussey), 5 P. D., 239.

Adulterous cohabitation prior to August 7, 1882, is no bar to pension. Overruling decision, s. c., 8 P. D. (o. s.), 247. *Constantia V. Auringer* (Asst. Sec. Bussey), 6 P. D., 10.

Section 2 of the act of August 7, 1882, is neither penal nor retrospective in character or effect, and the open and notorious adulterous cohabitation of a widow occurring prior to the passage of the act does not operate to terminate her pension. *Jennette Thompson* (Asst. Sec. Reynolds), 7 P. D., 262.

The act of August 7, 1882, has no retroactive effect, nor will the open and notorious adulterous cohabitation of a widow, when such cohabitation had ceased before the passage of said act, deprive her of her pension. *Harriet M. Fellows* (Asst. Sec. Reynolds), 7 P. D., 387.

3. Act does not apply to applicants for pension.

The act of August 7, 1882, which provides that "the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension," does not apply

3. Act does not apply to applicants for pension—Continued.

to a widow who is an applicant for a pension, but its application is limited to a widow who is a pensioner. *Sarah E. West* (Asst. Sec. Bussey), 3 P. D., 115.

Overruled: 7 P. D., 207.

4. Act applies to both pensioners and applicants for pension.

The open, notorious, and adulterous cohabitation of a widow who is a pensioner, or an applicant for pension, on account of the service and death of her husband, will work a forfeiture of her right to a pension; and such cohabitation may be proved by her conduct in habitually, openly, and notoriously consorting with one or more persons of the opposite sex under circumstances which would lead the guarded discretion of a reasonable and just man to infer from such relation, as a necessary conclusion, that it was illicit. *Sarah E. West*, 3 P. D., 115; *Caroline Knappenberger*, 3 P. D., 263; *Sophia Lingers*, 4 P. D., 287; *Cynthia Evans*, 5 P. D., 188; and all other decisions are modified and overruled in so far as they are in conflict with the above holding. *Sarah J. Grooms* (Asst. Sec. Reynolds), 7 P. D., 207.

5. Act does not apply to mothers.

The act of August 7, 1882, does not apply to mother pensioners, or applicants for pension. Overruling *Catherine A. Williams. Mother of Royal Flint* (Sec. Teller), 11 P. D. (o. s.), 274.

The act of August 7, 1882, providing that the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation, has no application to the case of a dependent mother. *Caroline Knappenberger* (Asst. Sec. Bussey), 3 P. D., 263.

6. Act may apply to mothers.

Abandonment of husband, without good cause, and adulterous cohabitation by a dependent mother bars her right to further pension. *Lucinda M. R. Pool* (Asst. Sec. Hawkins), 1 P. D., 401.

See DEPENDENT RELATIVES.

7. Evidence and proof of.

Where a widow pensioner lives in the same house for several months with a married man, in the absence of his wife, illicitly cohabiting with him, and said cohabitation results in the birth of a child: *Held*, To constitute "open and notorious adulterous

7. Evidence and proof of—Continued.

cohabitation" within the meaning of the statute. *Mary E. Miller* (Asst. Sec. Hawkins), 1 P. D., 171.

Overruled: 4 P. D., 287. Affirmed: 7 P. D., 207.

The birth of a child out of wedlock is sufficient proof of open and notorious adulterous cohabitation to terminate a widow's pension under the act of August 7, 1882. *Mary E. Boeke* (Asst. Sec. Hawkins), 1 P. D., 427.

Contra: 5 P. D., 93.

The birth of four illegitimate children is of itself sufficient, under the uniform rulings of the Department, to bring the claimant's case within the act of August 7, 1882, as to "open and notorious adulterous cohabitation." Citing *Widow of George Martin*, No. 270571, December 4, 1885 (Ruling 154), Digest, 1885, 19; *Mary E. Miller*, 1 P. D., 171; *Mary E. Boeke*, ib., 427. *Minerva Beede* (Asst. Sec. Hawkins), 2 P. D., 119.

A widow pensioner who has been guilty of open and notorious adulterous cohabitation since the passage of the act of August 7, 1882, will be dropped from the pension roll upon proof of such fact; and the birth of an illegitimate child, and the continuous residence and association under the same roof with the father of her illegitimate child, will be accepted as proof of such adulterous cohabitation. *Susan Larimer* (Asst. Sec. Bussey), 3 P. D., 235.

A "cohabitation" that can not be observed by the nearest neighbor, nor either noticed or heard of by the community in which the pensioner dwells, can not be "open and notorious," as required by the statute as ground of forfeiture. *Louisa H. Pratt* (Asst. Sec. Bussey), 5 P. D., 93.

The fact that a widow, during all the time she was receiving a pension, was living with a man in the same house and in the same room, in which there was but one bed, with no other occupants in the house than the small children of such persons, constitutes such open and notorious adulterous cohabitation as is contemplated by the act of August 7, 1882, and such conduct operates to terminate such widow's pension. *Alice Gray* (Asst. Sec. Reynolds), 7 P. D., 134.

Illicit intercourse may be inferred from circumstances that lead to it by fair inference as a necessary conclusion. *Ibid.*

See also *Sarah J. Grooms*, SUBTITLE 4.

8. Principle involved.

The forfeiture of a widow's pension under the act of August 7, 1882, is based on the assumption that pensioner has substituted a paramour for her deceased husband, and is supported by him, thereby putting an end to her pensionable status. *Sarah E. West* (Asst. Sec. Bussey), 3 P. D., 115.

8. Principle involved—Continued.

The forfeiture of the widow's pension for adulterous cohabitation is based upon the fact or assumption that the widow has voluntarily, openly, and notoriously substituted a paramour for her deceased husband, and is supported by him, accordingly putting an end to her pensionable status. *Matilda Payne* (Asst. Sec. Bussey), 5 P. D., 161.

Above principles were substantially overruled in *Sarah J. Grooms*, 7 P. D., 207.

9. Burden of proof.

Burden of proof to establish adulterous cohabitation is upon the Government. *Addie A. Crofoot* (Asst. Sec. Hawkins), 1 P. D., 391.

10. As affecting title under the act of June 27, 1890.

A widow pensioner under the general law who has been dropped from the rolls under the act of August 7, 1882, is not pensionable under the act of June 27, 1890. *Sarah Jane Halsey* (Asst. Sec. Bussey), 6 P. D., 281.

Where a widow files a claim for pension under the act of June 27, 1890, and it appears that at the time of such filing she was living in open, notorious adulterous cohabitation, the act of August 7, 1882, is applicable, and the claim should be rejected. *Ann Manning* (Asst. Sec. Reynolds), 7 P. D., 205.

Where the application for pension under the act of June 27, 1890, was filed May 8, 1891, and the evidence shows open and notorious adulterous cohabitation on the part of the claimant since the spring of 1892, pension may be allowed to continue for one year from the date of filing the application. *Sarah Welch* (Asst. Sec. Reynolds), 7 P. D., 289.

A widow who was a pensioner, and dropped from the rolls for open and notorious adulterous cohabitation under the provisions of section 2 of the act of August 7, 1882, is not entitled to restoration under the act of June 27, 1890. *Ellen J. Pipes* (Asst. Sec. Reynolds), 7 P. D., 489.

The adulterous cohabitation of a widow subsequent to the passage of the act of August 7, 1882, works a forfeiture of her pension, or right to a pension, under the act of June 27, 1890, or under prior laws, from the commencement of such cohabitation. Cases cited: *Mary E. Boeke*, 1 P. D., 427; *Susan Larimer*, 3 P. D., 235; *Sarah J. Grooms*, 7 P. D., 207; *Ann Manning*, *ibid.*, 205; *Sarah Welch*, *ibid.*, 289; *Adolph Bernstein*, *ibid.*, 229; and *Sarah Jane Houser*, 6 P. D., 281. *Eliza Fain* (Asst. Sec. Reynolds), 7 P. D., 572.

See also DEPENDENT RELATIVES; MINORS; RESTORATION.

ADVANCE PAYMENTS.

See FEE.

AFFIDAVITS.

See DECLARATIONS; EVIDENCE; PRACTICE.

AGE.

See DECLARATIONS (Under act of June 27, 1890); DISABILITY; SERVICE.

AGENTS.

See ATTORNEYS.

AGREEMENTS.

See ATTORNEYS; FEES.

AID AND ATTENDANCE.**1. Regular (act of June 18, 1874).**

- (a) *Nature of helplessness, generally.*
- (b) *As distinguished from disability entitling to \$31.25.*
- (c) *Disability must approximate that from loss of both hands.*
- (d) *When insanity entitles to a first-grade rate.*
- (e) *The question of helplessness is wholly medical.*
- (f) *When question is not wholly medical.*
- (g) *What evidence is admissible in proof.*
- (h) *Illustrative cases within the law.*
- (i) *Illustrative cases not within the law.*

2. Frequent and periodical (act of July 14, 1892).

- (a) *Attendance must be continuing and permanent.*
- (b) *When insanity entitles to the intermediate (\$50) rate.*
- (c) *Question is not wholly medical.*

1. Regular (act of June 18, 1874).

To entitle a claimant to a rating of \$50 per month under the act of June 18, 1874, he must be "so permanently and totally disabled as to require the regular and personal aid and attendance of another person." *James B. Hanvey* (Asst. Sec. Hawkins), 1 P. D., 216.

The standard by which to determine the degree of disability for which the rate of \$50 per month is provided by the act of June 18, 1874, is the fact that the regular personal aid and attendance of another person is required. *Henry Schmidt*, 3 P. D. (o. s.), 158: see SUBTITLE (a), reaffirmed. *Daniel A. Wood* (Asst. Sec. Bussey), 3 P. D., 310.

Those persons only are entitled under the act of June 18, 1874, who require the aid and attendance of another person because of total and permanent helplessness, or have lost both

1. **Regular (act of June 18, 1874)—Continued.**

hands, or been practically totally disabled in both hands; and a person who has some use of both hands is not pensionable thereunder. *George Garfield* (Asst. Sec. Bussey), 4 P. D., 258.

(a) **Nature of helplessness, generally.**

The word "helplessness" as used in the act of June 18, 1874, does not imply utter physical prostration, but refers not only to the physical helplessness which compels one to depend at stated intervals, in the ordinary and necessary affairs of life, upon the personal aid and attendance of another person, but also to his inability to gain a subsistence by his own exertions. *Henry Schmidt* (Sec. Chandler), 3 P. D. (o. s.), 158.

"The regular personal aid and attendance of another person" provided by the statute is such "attendance" as is regular from day to day—not simply periodical, or at stated or regular intervals, but continuous in the sense that it must be at the command and service of the person whose total and permanent helplessness necessitates the aid and attendance of another in performing the ordinary and necessary functions of daily life. *Edmund O. Beers* (Asst. Sec. Reynolds), 7 P. D., 113.

(b) **As distinguished from disability entitling to \$31.25.**

As a governing principle, in cases where a disability is the result of disease (instead of injury), the higher rate allowed by the act of June, 1874, should be allowed only when it is shown the pensioner is a complete invalid, actually requiring the aid and attendance which an invalid is presumed to need, and which is absolutely necessary to his comfort and well-being; while the rate of \$31.25, provided in section 4698, Revised Statutes, should be allowed when he is only a comparative invalid, though requiring aid and attendance. *Cyrus W. Stanley* (Sec. Chandler), 3 P. D. (o. s.), 170.

The rate of \$31.25 was not abolished by the act of June 18, 1874, providing the rate of \$50 per month for those who were "so permanently and totally disabled as to render them utterly helpless or so nearly so as to require the regular personal aid and attendance of another person," but was retained for disabilities equivalent in degree, but not permanent. *Widow of Rowland M. Jones* (Asst. Sec. Bussey), 3 P. D., 72.

(c) **Disability must approximate that from loss of both hands.**

The act of June 18, 1874, which provides a pension of \$50 per month for certain specific disabilities resulting in total or permanent helplessness, requiring the regular aid and attendance of a second person, appears to indicate that it was not intended by the framers of the law that other disabilities from

1. **Regular (act of June 18, 1874)**—(Continued.)

- (c) **Disability must approximate that from loss of both hands**—Cont'd.
injuries to both hands should be pensioned under this act than such as are equivalent or nearly equivalent to the loss of both.
John R. Collett (Sec. Schurz), 6 P. D. (o. s.), 488.

- (d) **When insanity entitles to a first-grade rate.**

The Department holds that the "regular personal aid and attendance" contemplated by the act of June 18, 1874, is the same as that which is required by one who is confined in an asylum and whose mental derangement is such as to make personal aid and attendance necessary. *George Welch* (Asst. Sec. Bussey), 3 P. D., 121.

Mere confinement in an insane asylum does not entitle to the first grade rate on account of insanity; but to entitle to that rating the degree of helplessness specified in the law must be shown. *James Caton* (Asst. Sec. Bussey), 6 P. D., 159.

The mere fact that an insane pensioner is confined in an asylum does not show title to first-grade rating on account of insanity. Citing *James Caton*, 6 P. D., 159. *Thomas G. Conaty* (Asst. Sec. Bussey), 6 P. D., 238.

- (e) **The question is wholly medical.**

The question as to whether the extent and severity of a disability is such as to bring it within the rule announced as to what is, under the statute, "total and permanent helplessness," etc., is a purely medical one, and the opinion of the medical referee thereon is generally conclusive, when based on the results of medical examinations. Citing *Lucinda Gaskell*, 1 P. D., 29; *Patrick Preston*, ib., 262; *John Douglass*, ib., 52; *William H. Garrison*, ib., 262; *Joseph F. Faulkner*, ib., 292; *Uriah W. Romine*, ib., 299. *Edward Posson* (Asst. Sec. Hawkins), 2 P. D., 36.

- (f) **When question is not wholly medical.**

When soldier's disability is the result solely of disease contracted in the service and in line of duty, the question as to whether he is so totally and permanently helpless as to require the regular aid and attendance of another person is not wholly a medical one. *Edmund O. Beers* (Asst. Sec. Reynolds), 7 P. D., 113.

- (g) **What evidence is admissible in proof.**

The total and permanent helplessness of soldier requiring the regular personal aid and attendance of another person may be established by lay and ex parte medical testimony of credible witnesses who base their knowledge upon long and frequent personal observation. *Edmund O. Beers* (Asst. Sec. Reynolds), 7 P. D., 113.

1. Regular (act of June 18, 1874)—Continued.

(g) What evidence is admissible in proof—Continued.

Where such helplessness so established is medically found to be due solely to pensionable causes, the soldier is entitled to first-grade pension, \$72, under act of March 4, 1890, whenever an examining surgeon or board of surgeons certify to such degree of disability. *Ibid.*

(h) Illustrative cases within the law.

This claimant wears an artificial leg, but (because of the shortness of the stump) without a foot attached; his right arm is amputated near the shoulder, and the wound in his left shoulder so affects that arm and hand that they are frequently of little use; *Held*, said injuries not only totally incapacitate him from earning a subsistence from his own exertions, but necessarily require the regular aid and assistance from other persons in eating, dressing and undressing, and in many other actions necessary in a man's life; and the case is within the act of June 18, 1874, in the absence of any other provision of existing law which is commensurate with the extent of his disabilities, although it does not fulfill all the requirements of said act. *Henry Schmidt* (Sec. Chandler), 3 P. D. (o. s.), 158.

It being shown that the pensioner's left hand and arm are so disabled as to be as useless as if amputated, and that he is unable with his other hand and arm either to bathe his face, cut his food, or dress and undress himself, requiring aid and attendance for these purposes, it is *held* such is a condition of total and permanent helplessness, requiring regular aid and attendance, within the meaning of the law, although he is able to write with his right hand. *John R. Collett* (Sec. Teller), 11 P. D. (o. s.), 163.

(i) Illustrative cases not within the law.

Pensioner's vision in right eye is lost; injury to left eye rated at 15/19; loss of sight rated at 12/18; double inguinal hernia, 12/18; injury of left hand, 3/4. Examining surgeons certify no attendant is required: *Held*, pensioner is not shown to be so permanently and totally helpless as to require regular aid and attendance, and is properly rated at \$30. *John Costello* (Asst. Sec. Hawkins), 2 P. D., 84.

A pensioner being able to dress and feed himself, go about unattended, and care for himself generally a good part of the time, with only a few minutes' assistance daily from his wife, is not entitled to a first-grade rate, although he has occasional, regular, and periodical severe and aggravated attacks, requiring the aid and attendance of another person. *Edwin Barnum* (Asst. Sec. Bussey), 6 P. D., 175.

2. Frequent and periodical (act of July 14, 1892).

A person who requires the aid of another person in retiring to or rising from bed, in dressing or undressing, and in attending to the usual calls of nature, requires such frequent and periodical personal aid and attendance as is contemplated by the act of July 14, 1892, and is entitled to a pension of \$50 per month. *John J. Hill* (Asst. Sec. Reynolds), 7 P. D., 142.

(a) Attendance must be continuing and permanent.

Claimant, who is pensioned at \$30 per month for disease of heart, alleges that he has frequent attacks occurring at irregular intervals, during which he is confined to his bed and has to be nursed and waited upon by his wife: *Hehl*, That in order to give title to the rate of \$50 per month under the act of July 14, 1892, the need of frequent and periodical attendance must be continuing and permanent, and not merely exist occasionally and at irregular intervals. *Cyrus G. Wheaton* (Asst. Sec. Reynolds), 7 P. D., 228.

(b) When insanity entitles to \$50 rate.

A claimant, in a State hospital for the insane, who is unable to shave, bathe, or dress himself properly, unless under and by the personal direction of an attendant, and by reason of his mental condition is incapacitated for the performance of any manual labor, and who can not be permitted to go alone out of his ward or to walk about the grounds, except under the immediate care and watch of an attendant, requires such frequent and periodical aid and attendance as is contemplated by the act of July 14, 1892, so as to be entitled to a pension at the rate of \$50 a month. *Thomas L. Hurst* (Asst. Sec. Reynolds), 7 P. D., 583.

(c) Question is not wholly medical.

The question as to whether claimant requires frequent and periodical personal aid and attendance is not wholly a medical one. *John J. Hill* (Asst. Sec. Reynolds), 7 P. D., 142.

See also INCREASE.

AID-DE-CAMP.

See SERVICE (War of 1812).

ALIENS.

See ATTORNEYS; CITIZENSHIP; NONRESIDENTS.

ALLEGATIONS.

See DECLARATIONS.

ALLEGIANCE.**Oath of, requisite under act of February 14, 1871.**

A claimant for pension under the act of February 14, 1871, as a soldier of the war of 1812, must file an oath of allegiance, and it is not sufficient merely that his loyalty be proven. *Richard Robinson* (Sec. Delano), 1 P. D. (o. s.), 137.

Oath not required after December 1, 1873.

The oath of allegiance required by the act of February 14, 1871, was no longer essential after December 1, 1873, the date the statute repealing said requirement took effect. *Joshua Webster* (Sec. Delano), 3 P. D. (o. s.), 1.

AMENDMENTS.

See ATTORNEYS; DECLARATIONS.

AMPUTATIONS.

1. Act of March 3, 1883—amputation below the shoulder joint.
2. Act of August 4, 1886—amputation at middle of bone.
 - (a) *At the elbow.*
 - (b) *Below the elbow.*
 - (c) *Below the hip joint.*
 - (d) *At the knee.*
 - (e) *Below the knee.*
 - (f) *When amputation entitles to \$36 rating.*
3. Amputation at hip joint (act of March 3, 1879).
4. From nonpensionable cause.

1. Act of March 3, 1883—amputation below the shoulder joint.

The act of March 3, 1883, providing increase of pension for loss of arm at the shoulder joint, does not extend to a case of amputation below the shoulder joint. *Francis Green* (Asst. Sec. Hawkins), 1 P. D., 35.

2. Act of August 4, 1886—amputation at middle of bone.

Where the disability consists in an amputation of the arm "seven inches from the shoulder joint to end of shaft," and "five inches from surgical neck to end of shaft," it is not ratable at \$45 per month under act of August 4, 1886, the amputation being too remote from the shoulder joint. *John Adams* (Asst. Sec. Hawkins), 2 P. D., 63.

The middle point of the bone shall be determined in the arm by carefully measuring from the margin of the acromion process—with the arm hanging down—to the end of fragment of bone, and comparing this with the measurement of the sound arm from the acromion process to the outer condyle of humerus,

2. Act of August 4, 1886—amputation at middle of bone—Cont'd.

and in the leg, by measuring from the center of prominence of greater trochanter to end of fragment, and comparing this with measurement of sound leg from the above point to the prominence of outer condyle. *John W. Curran* (Asst. Sec. Bussey), 5 P. D., 1; *Oliver H. Petted* (Asst. Sec. Bussey), *ibid.*, 412.

The act of August 4, 1886, provides a pension of \$45 per month for the loss of an arm at the shoulder joint, or so near as to prevent the use of an artificial limb. Where the amputation of the arm has been at or above the middle of the arm bone, it shall be considered so near the joint as to prevent the use of an artificial limb. *Samuel B. Jones* (Asst. Sec. Bussey), 5 P. D., 159.

In applying the act of August 4, 1886, which provides the rate of \$45 for persons who shall have lost either an arm at the shoulder joint or a leg at the hip joint, or "so near the joint as to prevent the use of an artificial limb," the Department adheres to the rule laid down by the medical referee that "an amputation at or above the middle point of the bone of leg or arm should be considered, for pensionable purposes, so near the joint as to prevent the practical and beneficial use of an artificial limb." *Joseph Underwood* (Asst. Sec. Bussey), 5 P. D., 208; *Oliver H. Petted* (Asst. Sec. Bussey), *ibid.*, 412.

Where there is a discrepancy in the evidence as to the length of the stump of the amputated arm, and the condition of the stump is such that, although an artificial limb may be attached, it is of no practical use or benefit, the muscles being so atrophied that the arm can not be raised, it is held a rating of \$45 under the act of August 4, 1886, is warranted. Citing *John W. Curran*, 5 P. D., 1; *William H. McFarland*, 3 P. D., 381. *Edson W. Lyman* (Asst. Sec. Bussey), 6 P. D., 88.

The amputation of an arm at or above the middle of the arm bone, or of a leg at or above the middle of the thigh bone, shall be considered as being so near the joint as to prevent the use of an artificial limb, entitling the pensioner to a pension of \$45 per month under the act of August 4, 1886; and the rule laid down in the case of *John W. Curran*, 5 P. D., 1, will not be disturbed. *Daniel F. Hammell* (Asst. Sec. Reynolds), 7 P. D. 224.

Under the act of August 4, 1886, the rate of \$45 per month is allowed only for the loss of either an arm at the shoulder joint or a leg at the hip joint, or so near the joint as to prevent the use of an artificial limb. No other condition of the arm or stump may be considered in determining title under this act, except the point of nearness of the amputation to the joint. *William A. Till* (Asst. Sec. Reynolds), 8 P. D., 159.

2. Act of August 4, 1886—amputation at middle of bone—Cont'd.

The middle of the humerus has been fixed as the farthest point from the shoulder joint that will prevent the use of an artificial arm. *Ibid.*

(a) At the elbow.

The word "elbow" in the act of August 4, 1886, was evidently used in a conventional rather than a technical sense, and therefore a line drawn around the arm at the base of the head of the radius will be held to mark the lower limit of the "elbow." Where the arm is amputated at, on, or above said line it is lost at the elbow, within the meaning of said act, and the rate of pension for the same will be \$36 per month. Case of Lawrence Gates, 7 P. D., 200, cited and followed. *William W. Scott* (Asst. Sec. Reynolds), 7 P. D., 417.

(b) Below the elbow.

In cases of amputation below the elbow there is no authority of law to allow a pension in excess of \$30 per month because of inability of the pensioner to wear an artificial arm. *John Gridley* (Asst. Sec. Reynolds), 7 P. D., 223.

(c) Below the hip joint.

It was the intention of the act of August 4, 1886, no doubt, to include within its provisions all cases in which an artificial limb could not be worn, so as to be of some practical advantage, and as the stump of claimant's leg is only 6 inches long, an artificial limb only affords him a support for the body when perpendicular; he is entitled to the rate of \$45 per month. *William H. McFarland* (Asst. Sec. Bussey), 3 P. D., 381.

(d) At the knee.

The Department holds that under the act of August 4, 1886, it is not required that, in order to be entitled to the rate of \$36 per month, the amputation of a leg shall be at the knee joint, but only "at or above the knee," so that in determining the rate due to the pensioner's disability the question to be considered is whether or not the amputation was made "at the knee," in the sense intended by the law. *Wellington Glenn* (Asst. Sec. Bussey), 5 P. D., 284.

The word "knee," in the act of August 4, 1886, is used in a conventional rather than a technical sense, and covers that portion of the limb included between the upper edge of the condyles of the femur and the lower point of the attachment of the ligamentum patellæ to the tubercle of the tibia.

The point indicated by a line drawn around the limb immediately below the ligamentum patellæ, at the base of what is

2. Act of August 4, 1886—Continued.**(d) At the knee—Continued.**

known as the tubercle of the tibia, marks the lower limit of the knee, and an amputation at or above that limit is an "amputation at the knee," as contemplated by the act of August 4, 1886. *Lawrence Gates* (Asst. Sec. Reynolds), 7 P. D., 200.

Whenever the amputation is had at, on, or above the lower limit of the knee, as herein defined, the \$36 rate shall be allowed, and for an amputation below said designated point the \$30 rate will be allowed. *Ibid.*

The reasons given in support of the decision in the Wellington Glenn case, 5 P. D., 284, are not deemed tenable, and said case will not be recognized as authoritative. *Ibid.*

(e) Below the knee.

Under the act of August 4, 1886, the loss of the foot and lower limb, not at the kneejoint nor above the kneejoint, but at a point 3 inches below, there being fair motion of the kneejoint for locomotion, is not entitled to a higher rating than \$30 per month under the act of August 4, 1886. *William S. Huston* (Asst. Sec. Bussey), 5 P. D., 12.

(f) Where amputation entitles to \$36 rating.

Under the act of August 4, 1886, a pensioner is not entitled to \$36 per month on account merely of an amputated arm or leg, but only if he is "totally disabled in the same" or by reason of it. *Charles W. Struble* (Asst. Sec. Hawkins), 2 P. D., 14.

Where amputation of leg is just below the tubercle of tibia and condition of stump is such that an artificial limb, or other locomotive contrivance, can not be used, the leg is "totally disabled" within the meaning of the act of August 4, 1886, and the disability is ratable at \$36 per month. *William H. Bell* (Asst. Sec. Bussey), 4 P. D., 87.

Where amputation is below the knee and is such that an artificial limb can not be worn, there is total disability of the leg within the meaning of the act of August 4, 1886, entitling to \$36 per month. Citing Wellington Glenn, 5 P. D., 284; William H. Bell, 4 P. D., 87. *Henry Wheeler* (Asst. Sec. Bussey), 6 P. D., 56.

3. At the hip joint (act of March 3, 1879).

By amputation at the hip joint (in the act of March 3, 1879) is understood an amputation in which the whole of the thigh bone is removed from its socket. *William Inman* (Sec. Kirkwood), 9 P. D. (o. s.), 165.

3. At the hip joint (act of March 3, 1879)—Continued.

Under act of March 3, 1879, amputation at the hip joint means the removal of the whole thigh bone from its socket. *Albert L. Rennells* (Asst. Sec. Reynolds), 7 P. D., 180.

4. From nonpensionable cause.

The amputation of a leg from a cause not pensionable does not impair the party's right to continuance of pension allowed on account of a permanent degree of disability which existed in the leg prior to such amputation. *Daniel McLeod* (Sec. Delano), 2 P. D. (o. s.), 463.

See also COMMENCEMENT; RATING.

ANTE-REBELLION.

See COMMENCEMENT; LIMITATION; ORIGIN; RATING; SERVICE; TITLE; WIDOWS.

APPEALS.

1. Board of Pension Appeals.
2. Appeal lies from final action only.
3. Where no denial of a right is asserted or exists—Rule 2.
4. No appeal lies in a claim by a deserter.
5. Unauthorized, will not be recognized.
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 - (a) *Attorney attacking his client's title.*
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10. Reports on appeals.
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12. Should specify grounds on which based.
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15. Where additional evidence is alleged to be procurable, or is filed.
16. As to rate—Rule 6.
17. Repeated appeals.
18. Reconsideration.
19. Reversals on appeal.
20. Notice of decisions.

1. Board of Pension Appeals.

The Board of Pension Appeals will be charged with the consideration of all appeals from the action of the Commissioner of Pensions in claims for pension and bounty land. The board will not exercise original jurisdiction in any case, nor

1. Board of Pension Appeals—Continued.

consider any question upon which final action has not been taken by the Commissioner of Pensions, except in such cases as may be submitted by him for instructions by the Secretary of the Interior. *Order* (Sec. Teller), 16 P. D. (o. s.), 141.

2. Appeal lies from final action only.

No appeal will lie until a claim has been finally adjudicated by the Pension Office. *Charles B. Moore* (Sec. Delano), 2 P. D. (o. s.), 343.

No appeal will lie from any interlocutory order or ruling made in the adjudication of a claim, such as a refusal to grant an additional medical examination under a pending claim for increase; but there must be a final adjudication and determination of the claim before an appeal may be filed. *John W. Morris* (Asst. Sec. Hawkins), 2 P. D., 73.

There must have been final action by the Pension Bureau. *Elijah Ratliff* (Asst. Sec. Reynolds), 7 P. D., 6.

The Pension Office desired further evidence as to the extent of the pensioner's disability and issued an order for a medical examination, with which the pensioner has declined to comply. The case is in effect pending before the Pension Office, and the appeal is therefore dismissed under rule 1 of the Rules of Practice in Pension Cases, which provides for appeal only in cases in which final action has been taken by the Commissioner of Pensions. *Frank Bishop, jr.* (Asst. Sec. Reynolds), 8 P. D., —.

3. Where no denial of a right is asserted or exists—Rule 2.

There having been no denial by the Bureau of Pensions of any right asserted or existing in this case, and the appeal failing to meet the requirements of rule 2 of Department Rules of Practice, it is therefore dismissed. *Fatima Crawford* (Asst. Sec. Reynolds), 7 P. D., 357.

4. No appeal will lie in claim by a deserter.

While a charge of desertion exists against the soldier a claim for pension, based on his service, will not be considered on appeal. *Minor of John Hendricks* (Asst. Sec. Hawkins), 1 P. D., 31.

5. Unauthorized, will not be recognized.

An appeal not authorized by claimant, and not purporting to be the appeal of claimant, nor signed by the attorney in his representative capacity, is irregular and should not be recognized. *Bartholomew Davis* (Asst. Sec. Reynolds), 7 P. D., 86.

See also REPORTS ON APPEALS.

6. By attorney—suspended, disbarred, or not entitled to recognition.

An appeal by a suspended attorney will not be entertained. *William Edens* (Sec. Cox), 7 L. B. P., 15.

An appeal duly executed by claimant, but filed by a disbarred attorney, will be treated as an appeal by such claimant in his or her own proper person, but the attorney will not be recognized. *Mary A. Reynolds* (Asst. Sec. Reynolds), 8 P. D., 287.

An appeal filed by an attorney who is not entitled to recognition, but which is signed by the claimant, will be considered as an appeal by the claimant in person. *Samuel C. White* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Attorney attacking his client's title.

Where an attorney, in his appeal, with a view to showing right to a fee, attacks his client's title to pension, such objection can not be considered in determining the merits of the appeal, and the appeal itself will be dismissed. *John M. Defoe* (Asst. Sec. Reynolds), 8 P. D., 70.

(b) After claimant's death.

An attorney has no right to appeal after the death of his client. *Calvin Hartwell* (Sec. Usher), 5 L. B. P., 130.

Where the soldier died before final action by the Bureau of Pensions, his claim having been subsequently rejected: *Held*, That the attorney of record has no legal right to appeal from such rejection without first obtaining from the widow of a soldier a power of attorney to continue its prosecution. Citing *Charles W. Fitts*, administrator (3 P. D., 267); *William Goodson* (7 P. D., 294); *J. Ambler Smith* (7 P. D., 35). *James Keating* (Asst. Sec. Reynolds), 7 P. D., 280.

The attorney for the conservator of an insane claimant has no right to appeal after said claimant's death from the subsequent rejection of the claim pending at the time of death, unless a new power of attorney is filed from the one who succeeded, on such claimant's death, to his right to pension under said claim. Citing *James Keating*, 7 P. D., 280; and *Americus Mayo*, ib., 531. *Phineas D. Judson* (Asst. Sec. Reynolds), 8 P. D., —.

7. Limitation.

As in all courts of law and equity there are limitations varying in the different States (but in none exceeding five years) to the right of appeal from a judgment, this limitation should be adopted in the Pension Office, and in no instance should a case be reviewed after five years unless upon discovery of new

7. Limitation—Continued.

evidence not accessible by the party by due diligence at an earlier day; and acting under this rule I should unhesitatingly affirm the Commissioner's decision. *Thomas Murray* (Sec. Stuart), 2 L. B. P., 88.

It being sixteen years since the rejection of this claim, no appeal should now be entertained upon the original proofs alone. Quoting *Thomas Murray*, 2 L. B. P., 88. *Charlotte M. Dickenson* (Actg. Sec. Otto), 6 L. B. P., 318.

An appeal on the original evidence alone, taken more than five years after the rejection of the claim, will not be entertained, under the rule announced in *Thomas Murray*, 2 L. B. P., 88. *Elizabeth McCluney* (Sec. Delano), 1 P. D. (o. s.), 84.

8. By the medical referee.

There is no precedent for an appeal by the medical referee; and while his appeal will be entertained in this instance, owing to the urgency of a decision in the claim, the action is not to be regarded as a precedent for any similar appeal in the future. *T. B. Hood, medical referee, In re George W. Green* (Sec. Chandler), 3 P. D. (o. s.), 229.

9. By minor's guardian in widow's claim.

The guardian of minor children who have no claim on file in their own right has no authority to file an appeal from the action of the Commissioner of Pensions rejecting the widow's claim. *Benjamin L. Davis, guardian minors of Asa Eastman* (Asst. Sec. Reynolds), 8 P. D., —.

10. Reports on appeals.

Where the point to be decided in an appeal is a purely medical question, a comprehensive opinion, as to the question at issue, by the medical referee should accompany the report. *Instructions* (Actg. Sec. Cowen), 1 P. D. (o. s.), 29.

Reports on appeals wherein the action of the office is based upon voluminous reports of special agents should be accompanied by an abstract of said evidence, brief in form, and so arranged as to show, without labored examination, all the evidence, pro and con, so procured. *Philip Taylor* (Actg. Sec. Cowen), 3 P. D. (o. s.), 117.

Reports on appeals entered by unauthorized persons should be made, but the fact of want of authority on the part of such persons should be noted therein. *Robert Taylor* (Sec. Schurz), 7 P. D. (o. s.), 284.

11. Separate appeals—Rule 1 construed.

The provision of rule 1 of Rules of Practice in Appeals before the Secretary of the Interior, "requiring that each claim appealed must be accompanied by its separate appeal and specification of the errors alleged therein," was not intended to apply, and can not be properly applied, to the case of a single appeal from the rejection of several separate and distinct claims, in which the title to pension springs from a common source, and the law vests the right to prosecute such claims, and to receive the pension that may be allowed in each, in the person or persons filing such appeal. *Joseph A. Overholt* (Asst. Sec. Reynolds), 8 P. D., 68.

12. Should specify grounds on which based.

Appeals should specify the grounds on which based, and none not observing this regulation will be entertained. *Communication to Jesse M. Reid* (Sec. Delano), 7 L. B. P., 292.

The error of law, mistake of fact, or inconsistency of opinion must be specifically set forth. *Elijah Ratliff* (Asst. Sec. Reynolds), 7 P. D., 6.

13. Requisites of Rule 2.

A general allegation that injustice has been done does not constitute a proper appeal. Nor is it sufficient to ask of the Department a general review of the testimony unless some conflict between the action of the Bureau of Pensions and the law applicable to the case, or the facts in the case, be pointed out. *Elijah Ratliff* (Asst. Sec. Reynolds), 7 P. D., 6.

14. Mere allegation of injustice insufficient.

An appeal based upon mere allegation of injustice in ordering an examination before a particular board of examining surgeons, in the absence of any showing of such alleged injustice, is improper, and will be dismissed. *Frank L. Allen* (Asst. Sec. Reynolds), 7 P. D., 568.

15. When further evidence is alleged to be procurable or is filed.

An appeal stating that claimant can prove his claim by further evidence will not be entertained, as appeals are decided only upon the original evidence filed in the Pension Office previous to the rejection of the claim from which appeal is taken, and subsequent testimony embracing new facts should first be passed upon by the Pension Office. *Communication to William H. Harrison* (Sec. Browning), 6 L. B. P., 347.

Under an established rule of the Department, no appeal in a pension claim will be entertained where additional evidence is

15. When further evidence is alleged to be procurable or is filed—Continued.

submitted which has not been considered by the Pension Office, and an affidavit executed by a claimant, but filed as an appeal, will not be entertained as such. It is properly evidence, and as such will be forwarded to the Commissioner of Pensions for consideration. *James Green* (Sec. Delano), 1 P. D. (o. s.), 357.

Appeals are not to be considered in connection with evidence which has not been presented to the Pension Office for action. *Richard Whiteside* (Sec. Schurz), 5 P. D. (o. s.), 412.

Appeals in pension cases when accompanied by additional evidence are not considered by this Department; but when all the evidence which is desired to be presented has been considered by the Commissioner of Pensions, appeals to the Department from his adverse decision thereon may be taken. *Communication to D. W. Smith* (Asst. Sec. Joslyn), 15 P. D. (o. s.), 27.

16. As to rate—Rule 6.

If upon the issue of a certificate of pension the applicant claims that error exists as to the rate of his pension, he should present the facts to the Bureau of Pensions, and an appeal will not be entertained in such case until after adverse action thereon has been taken by said Bureau. (Rule 6 of Rules of Practice before the Commissioner of Pensions.) The appeal in this case is dismissed for failure to comply with the foregoing rule. *Jacob Oiler* (Asst. Sec. Reynolds), 7 P. D., 411.

Contention as to rate of pension must be made primarily to the Commissioner of Pensions. *George A. Brown* (Asst. Sec. Reynolds), 8 P. D., 310.

Rule 6 of the second division of Rules of Practice in Pension Cases applies only when the appeal goes to the question, directly or collaterally, as to what rate, statutory or otherwise, shall be allowed, and not where the contention of the appeal is merely that pension should commence from a date prior to the allowance made. *Andrew J. Deising* (Asst. Sec. Reynolds), 8 P. D., —.

Rule 6 of second division of the Rules of Practice has no application to cases where the rate fixed is the result of judgment on the evidence, but was only designed to apply to errors patent on the face of the record and which would be naturally corrected by the Commissioner of Pensions when his attention was called to the error by the claimant. *Charles Gokel* (Asst. Sec. Reynolds), 8 P. D., —.

17. Repeated appeals.

Repeated appeals of the same claim, based upon the same or merely cumulative evidence which does not affect the vital

17. Repeated appeals—Continued.

status of the claim, will not be considered. *Morgan Gordon* (Asst. Sec. Hawkins), 1 P. D., 188.

18. Reconsideration.

The mere filing of cumulative testimony, bearing on a claim as originally made and decided, is not a sufficient reason for disturbing such decision. *John J. Fox* (Asst. Sec. Hawkins), 1 P. D., 289.

The Department declines to consider evidence merely cumulative on a second appeal. Only newly discovered evidence will entitle a case to consideration upon a second appeal, such as would ordinarily entitle a party to a new trial on a rehearing under the well-known rules of practice in courts of law, except in cases of palpable error or mistake. *Louis Ruch* (Asst. Sec. Hawkins), 1 P. D., 390.

See also RES ADJUDICATA.

19. Reversals on appeal.

A preponderance of the evidence in favor of the claim should be very clear to justify a reversal of the decision adverse to it by the office specially charged by law with the examination of said claim. *Tabitha McClure* (Sec. C. B. Smith), 5 L. B. P., 24.

20. Notice of decisions.

It has never been the practice of this Department to inform attorneys or claimants of the results of their appeals, though in exceptional cases it has been done; but the rule is always to return the papers with a decision, the purport of which is to be communicated to the appellant by the Pension Office, except in those cases wherein the decision is overruled by the Department. The exception as to the Department notifying of such decisions should not apply to those cases wherein the Pension Office, without any intervention on the part of the Department, abandons the position from which the appeal is taken. *Rosanna Stewart* (Sec. Chandler), 3 P. D. (o. s.), 453.

See also ACCRUED PENSION (Act of March 2, 1895); ATTORNEYS; FACE-BRIEF; JURISDICTION; MEDICAL REFEREE; RECONSIDERATION; RES ADJUDICATA; RERATING.

APPLICATIONS.

See ACCRUED PENSION; DECLARATIONS.

APPROPRIATION ACTS.

See ACCRUED PENSION (Acts of March 1, 1889, and June 30, 1890).

ARMY REGULATIONS.

See SECRETARY OF WAR.

AROOSTOOK DISTURBANCES.

See BOUNTY LAND (Service).

ARREARS.

1. Generally.
2. Under act of June 16, 1880.
3. When original pension was under special act.
4. Navy and Marine Corps, under section 4757, Revised Statutes.
5. Accrued arrears on death of claimant.
6. Soldier must have applied to entitle widow.
7. Soldiers' Home not entitled.
8. Evidence as to disability—when required.
9. On restoration, from date of dropping.

1. Generally.

Appellant served in the army as hospital steward, and his right to pension accrued upon the passage of the act of June 6, 1866 (section 10), granting pension for such rank. His original application was filed November 20, 1869, within the time prescribed by the act of July 27, 1868, and his claim was adjudicated in August, 1876, to allow him pension from the date of his discharge from service: *Held*, That the acts of January 25 and March 3, 1879, do not, under the circumstances above set forth, confer right to any arrears of pension, and the rejection of his claim for such arrears is affirmed. *Joseph H. Knight* (Sec. Schurz), 6 P. D. (o. s.), 387.

Arrears of pension to date of a soldier's discharge from the service are allowable under the act approved March 3, 1879, on account only of independent or separate disabilities alleged, prior to July 1, 1880, of service origin; but the increase of a pension on account of an increase of disabilities is allowable for a pathological sequence of pensioned disabilities from the date only of the medical examination whereby, under section 4698½, Revised Statutes, the increase of said disabilities is established. *William S. Reagan* (Asst. Sec. Bussey), 5 P. D., 222.

2. Under act of June 16, 1880.

Under act of June 16, 1880, arrears from June 17, 1878, should not be allowed for any period during which the pensioner was drawing a less rate than \$50 per month. *William T. Brown* (Sec. Schurz), 8 P. D. (o. s.), 74.

3. Where original pension was under special act.

Arrears of pension can not be allowed where original pension was granted by special act. *Edwin Woodson* (Actg. Sec. Bell), 6 P. D. (o. s.), 120.

4. Navy and Marine Corps under sec. 4757, Revised Statutes.

Beneficiaries under section 4757, Revised Statutes, are not entitled to arrears under the acts of January 25 and March 3, 1879. *James W. Pierce* (Sec. Schurz), 7 P. D. (o. s.), 233.

5. Accrued arrears on death of claimant.

Under acts of January 25 and March 3, 1879, the arrears due an invalid pensioner at date of death can only be paid as prescribed by section 4718, Revised Statutes. *Peter Lyle* (Sec. Schurz), 7 P. D. (o. s.), 41.

Arrears from date of soldier's death to the date of the commencement of mother's pension, settled under the limitations of act of July 27, 1868 (commencing from the date of filing of last essential evidence), can not be paid to the father, as section 4718, Revised Statutes, does not authorize the payment to a father of a soldier the pension which accrued to the mother. *James Dees* (Sec. Schurz), 6 P. D. (o. s.), 183.

Where a dependent mother pensioner died before the passage of the arrears acts of January 25 and March 3, 1879, the father of the soldier is not entitled to the pension which would have accrued and would have been paid to the mother, had she lived until the passage of said acts, to the date of her son's death. *Jane S. Newell* (Actg. Sec. Joslyn), 15 P. D. (o. s.), 42.

6. Soldier must have applied to entitle widow.

Arrears of pension, under acts of January 25 and March 3, 1879, from date of soldier's discharge to date of his death are not due to widow where soldier himself failed to make application during his lifetime. *Mary A. Lord* (Sec. Schurz), 6 P. D. (o. s.), 174.

There is no law authorizing an executor or administrator of a deceased soldier, who during his lifetime never made application for the benefits provided in section 6, act of July 27, 1868, to receive arrears. *Administrator of Louis A. Saunders* (Sec. Cox), 7 L. B. P., 45.

7. Soldiers' Home not entitled.

Arrears under act of January 25, 1879, are not authorized to be collected by Soldiers' Home on assignment or otherwise. *Atty. Gen. Devens*, 16 Op., 374.

8. Evidence of disability—when required.

Where a claimant was granted arrears under the acts of January 25 and March 3, 1879, and objects to the rate of pension at which arrears was allowed, the Commissioner properly required him to furnish evidence as to the extent of his disability during the period for which said arrears was allowed. *Charles H. Fisher* (Sec. Schurz), 6 P. D. (o. s.), 191.

9. On restoration, from date of dropping.

A widow pensioner who is dropped from the rolls under the act of July 27, 1868, may be restored upon making satisfactory explanation of the intermission of her claim, and on such restoration she is entitled to arrears; but if dropped under the act of February 4, 1862, there is no authority for restoration, unless it may be implied authority in this Department to correct any error of the Secretary's, if it be shown to be an error of fact. In neither case does the act of June, 1866, have any application, as that act, commencing pension from the date of filing the last paper in the case, relates only to original and not restoration claims. *Agnes Wheeler* (Sec. Cox), 7 L. B. P., 18.

On review of above case it was found pension was dropped because of the limitation prescribed in the statute under which it was granted, being a five-year pension only, and the second claim was found to be an original claim under a subsequent act. It was accordingly held that the claim was subject to the act of June 6, 1866, as to commencement of pension thereunder. (*s. c.* (Sec. Cox), *ibid.*, 107.

See also ACCRUED PENSION; COMMENCEMENT; CONSTRUCTION OF LAWS; ELECTION; FRAUD AND MISTAKE; LIMITATION; MINORS; RATING; REDUCTION; REEATING; RESTORATION; SPECIAL ACT; VESTED RIGHT.

ARTICLES OF WAR.

See DESERTION.

ARTIFICIAL LIMBS.

1. Act of June 8, 1872, is still in force.
2. Act of June 18, 1874—when applicable.

1. Act of June 8, 1872, is still in force.

In view of the provisions of the act of March 1, 1875, making appropriation in regard to artificial limbs, it is held that the act of June 8, 1872, is not repealed by section 4787, Revised Statutes. *Instructions* (Actg. Sec. Cowen), 2 P. D. (o. s.), 460.

2. Act of June 18, 1874—when applicable.

This appellant being clearly in the class of persons embraced by the provisions of the act of June 18, 1874, and being entitled to pension thereunder, although pensioned at the same rate under a prior act, the proviso of said act of June 18, 1874, declaring that no artificial limb or commutation therefor shall be furnished, is applicable. *Daniel McMahon* (Actg. Sec. Cowen), 3 P. D. (o. s.), 41.

See also AMPUTATIONS.

ASSETS.

See ACCRUED PENSION.

ASSIGNMENT.

See ATTORNEYS; BOUNTY LAND; PAYMENT.

ATTORNEYS.

1. Abandonment.
 - (a) *Where claimant files a second claim subsequent to abandonment of first.*
2. Agents of attorneys.
3. Appeals by.
4. Assignment—execution of.
 - (a) *Consent of claimant.*
 - (b) *Payment under invalid assignment.*
5. Call slips—when not required.
6. Certificate of character.
7. Consent of claimant.
8. Death—of claimant.
 - (a) *Death of attorney.*
9. Declaration, informal—rights under.
10. Diligence.
 - (a) *Evidence of.*
11. Disbarment.
12. Discharge.
13. Duties and obligations—as to subsequent declarations.
 - (a) *As to reopening and appeal.*
14. Examination, claimant's failure to appear for.
15. Examination of papers.
16. Fee, right to, generally.
 - (a) *Right to, determinable from record at time of adjudication.*
17. Fee contract.
18. Firms—person signing firm name.
 - (a) *Death of partner.*
19. Forfeiture.
20. Fraud.
21. Government employee.
22. Increase claims.
23. Indian claims.
24. Information.
25. Insane persons.

26. Malfeasance—retaining instead of filing evidence.
 - (a) *Where evidence is executed before attorney.*
27. Neglect, under rule 12, generally.
 - (a) *Where claimant fails to appear for examination.*
28. Nonresidents.
29. Notice, generally, of rejection.
 - (a) *Where two claims (under different laws) are pending simultaneously.*
 - (b) *Notice to claimant is not notice to attorney.*
 - (c) *Of suspension of attorney.*
30. Oath.
31. Orders—insufficient publicity of.
 - (a) *Order '174.*
32. Partners.
33. Payment.
34. Personal representatives.
35. Power of attorney.
 - (a) *Sections 4768, 4785, and 4786, Revised Statutes.*
 - (b) *Latent ambiguity in.*
 - (c) *Contract for fee.*
 - (d) *Revocation of.*
36. Priority.
37. Qualifying by—oath.
 - (a) *Certificate of character.*
38. Recognition after forfeiture.
 - (a) *After claim is complete.*
 - (b) *After rejection and abandonment.*
 - (c) *Claims under acts of February 14, 1871, and March 3, 1878.*
 - (d) *Under general law and act of June 27, 1890.*
 - (e) *When letters of guardianship must be filed.*
39. Record.
40. Refundment.
41. Reopening.
42. Requirements.
43. Revival of attorneyship—none after supersedure.
 - (a) *Where there is forfeiture but no supersedure.*
44. Rules.
45. Ruling 124.
46. Service—when by second, inures to benefit of first attorney.
 - (a) *When by first, inures to benefit of second attorney.*
47. State agents.
48. Subsequent claims.
49. Substitution.
 - (a) *Written consent of claimant requisite to.*
 - (b) *Power of*
50. Supersedure.
51. Suspension—power of Secretary.
 - (a) *General instructions relative to.*
 - (b) *Employing disbarred attorney as agent.*
52. Title to practice.
53. Transfer.

1. Abandonment.

Where the papers in a case show that the original attorney has abandoned the claim, another attorney may be recognized. *Elisha Yeamans* (Sec. Delano), 2 P. D. (o. s.), 290.

(a) Where claimant files a second claim after abandonment of first.

Where an application under section 2 of the act of June 27, 1890, was rejected on March 17, 1891, the attorney filing and prosecuting the same having failed to take any action therein since said rejection, is not entitled to a fee upon an allowance of a claim subsequently filed under the same act by the claimant in his own proper person, in which said attorney rendered no service. *George Smith* (Asst. Sec. Reynolds), 7 P. D., 424.

The claim for increase in which appellant was attorney having been abandoned by the applicant, who thereafter filed a claim in his own behalf, which was allowed, the appellant was not entitled to a fee. *Robins E. Babcock* (Asst. Sec. Reynolds), 7 P. D., 285.

See also SUBTITLES: NEGLECT; RECOGNITION; SUBSTITUTION.

2. Agents (of attorneys).

It is not necessary that an agent who is employed by attorneys to conduct their business for them shall be also an attorney of record in the Bureau of Pensions. Quoting and approving decision, 3 P. D., 152. *Milo B. Stevens & Co., in re Mark J. Maloney* (Asst. Sec. Bussey), 4 P. D., 55.

See also SUBTITLES: QUALIFYING BY ATTORNEYS; STATE AGENTS.

3. Appeals.

Where an appeal from the rejection of a case is filed in the time allotted, by rule 13, to the attorney of record, it inures to his benefit the same as though he himself had taken such action. *Albert Huber* (Asst. Sec. Reynolds), 8 P. D., 80.

Where a claim under the act of June 27, 1890, has been rejected and the attorney therein fails to appeal, another attorney who filed a new declaration after said rejection may be recognized for the purpose of entering an appeal from the rejection of the first claim, though he had no specific power of attorney to appear in such rejected claim, for the reason that being the attorney in the second claim it was his duty to secure allowance of pension from the earliest date to which claimant was entitled. *John Smith* (Asst. Sec. Reynolds), 8 P. D., —.

See also SUBTITLES: DEATH; DUTIES AND OBLIGATIONS; NOTICE.

5. Assignment, execution of.

The assignment of an attorneyship in a pension claim not executed in the presence of an officer competent to administer oaths is not valid, and transmits no title to the assignee. *James Sullivan* (Asst. Sec. Reynolds), 7 P. D., 519.

(a) Consent of claimant.

Appellant came into the case by transfer. At the time said transfer was filed in the Bureau the claim was not complete. As claimant's written consent to the assignment was not obtained as required by rule 2, Rules of Practice before the Commissioner of Pensions, said assignment was invalid and appellant had no title. *Alexander Robbins* (Asst. Sec. Reynolds), 7 P. D., 358.

(b) Payment under invalid assignment.

Where invalid assignment has been made and the Bureau of Pensions has certified to the assignor the check in payment of the fee, and said assignor has indorsed the same to the assignees, who are attorneys practicing before the Bureau, said assignees may be required to refund. *James Sullivan* (Asst. Sec. Reynolds), 7 P. D., 519.

5. Call slips—when not required.

Where an attorney, entitled to information as to the effect of evidence filed by him, has asked for such information, and the Bureau has failed to furnish it such failure is error. Where an attorney entitled as aforesaid has made the proper call for status, the subsequent filing of similar calls at intervals of a year or less is not necessary to the preservation of his right to recognition. *John S. Keisor* (Asst. Sec. Reynolds), 7 P. D., 558.

When an attorney, who is entitled to the requirements upon the condition that he call up the case at intervals of one year or less until recognized, *prima facie* completes the case and then calls it up, the subsequent filing of call slips is not necessary to preserve his rights. The claim was completed within the time of the appellants, and, as they were not in default, they should have been paid a fee. *Minors of Chesley Cooper* (Asst. Sec. Reynolds), 8 P. D., 216.

6. Certificate of character.

See SUBTITLE: QUALIFYING BY ATTORNEY.

7. Consent of claimant.

See SUBTITLE: ASSIGNMENT; SUBSTITUTION.

8. Death—of claimant.

Under the established practice a power of attorney is valid after the death of the claimant to the extent that the attorney may receive compensation from the accrued pension for his services. *Hosmer Chase* (Asst. Sec. Bussey), 4 P. D., 89.

Where a claim for pension is pending before the Bureau and the applicant dies, the attorney of record will be permitted to proceed under his original contract and prosecute the claim to adjudication, but on adjudication his rights and authority under said contract terminate. If the claim be rejected, and he desires to file evidence with a view to reopening, or to appeal, he must, before proceeding in the matter, obtain a power of attorney from the widow or the person next in order of succession. *Americus Mayo* (Asst. Sec. Reynolds), 7 P. D., 531.

See also SUBTITLE: APPEALS; REVOCATION.

(a) Death of attorney.

See SUBTITLE: FIRMS; PERSONAL REPRESENTATIVES.

9. Declaration (informal), rights under.

An attorney can not be superseded within one year from the date when he is informed of the requirements, although the declaration filed by him is informal, and the formal declaration is filed within a year by another attorney. *Louis Bronner* (Asst. Sec. Bussey), 4 P. D., 357.

See also SUBTITLE: DUTIES AND OBLIGATIONS.

10. Diligence.

The mere filing by an attorney of a statement that he has advised claimant of requirements and is endeavoring to assist the latter in procuring the necessary evidence is not sufficient cause shown for his failure to file such evidence. *Sidney M. Brownell* (Asst. Sec. Reynolds), 7 P. D., 373.

(a) Evidence of

Mere private records kept in an attorney's office are not to be received as proof of due diligence; such diligence must be shown by the record in the claim. *Almond B. Gage* (Asst. Sec. Hawkins), 2 P. D., 163.

See also SUBTITLE: NEGLECT.

11. Disbarment.

Dropping of name from roll of attorneys practicing before Pension Office, upon the ground that he attempted to establish a fraudulent pension in his own behalf, was proper. *Joseph Rothenbiller* (Actg. Sec. Bell), 4 P. D. (o. s.), 180.

12. Discharge.

Payment to the attorney of the fee agreed upon is full performance of contract on the part of a claimant for pension, and where this has been made the latter is at liberty to discharge the former from service in further prosecution of a claim based on disabilities not accepted at the time of adjudication. *John O. McNabb* (Asst. Sec. Reynolds), 7 P. D., 431.

13. Duties and obligations—as to subsequent declarations.

Where an attorney commences and prosecutes a claim for widow's pension to a successful issue he is not bound to prosecute a subsequent claim for additional pension for a posthumous child born after making the contract for the prosecution of the widow's claim; such claim is a new claim, and the attorney prosecuting the same is entitled to a fee of \$10 under the act of June 27, 1890. *Sarah Miznerr* (Asst. Sec. Reynolds), 7 P. D., 62.

Where an attorney filed an application for pension under section 2 of the act of June 27, 1890, alleging a cause of disability resulting in partial inability to earn a support by manual labor, and does not neglect the claim, and another attorney files a second declaration in which a different cause is alleged, and upon adjudication both of said causes are accepted as contributing to said inability, on allowance of pension the first attorney is entitled to recognition. *Held*, That while the filing of the second declaration was valuable and necessary service, it gave the person named as attorney therein no rights, for the reason that inasmuch as it was filed in the original attorney's time it must be considered as having been filed by him. *James Sullivan* (Asst. Sec. Reynolds), 7 P. D., 519.

This is a claim for increase of pension under the act of June 27, 1890. One declaration was filed by George E. Lemon, and another by appellant. In the first, disease of lungs was alleged; in the second, loss of forearm. January 19, 1894, certificate issued granting increase to \$12 per month. Loss of part of forearm only was accepted as a contributory cause of inability to earn a support by manual labor. The declaration filed by Mr. Lemon was in proper form, and in it was alleged a cause of disability which, if found to exist in a ratable degree, would have entitled claimant to an increase of pension. Both attorneys filed evidence with a view to establishing loss of part of forearm, but that furnished by appellant was filed within a year from the date on which Mr. Lemon filed the first declaration. *Held*, That the power of attorney in Mr. Lemon's favor gave him the right and made it his duty to establish not only the cause of disability alleged by him, but

13. Duties and obligations—as to subsequent declarations—Cont'd.

that alleged by appellant, he, Lemon, having acquired rights of which, for a year at least, he could not have been lawfully dispossessed. *Held*, That as the cause of disability alleged in the second declaration had not been previously alleged, said declaration was necessary. But inasmuch as that service was performed at a time when Mr. Lemon was entitled to recognition, it was contributory service and must be credited to him. As to the evidence filed by appellant with the declaration, the same rule must be applied. *Isaac Turner* (Asst. Sec. Reynolds), 7 P. D., 523.

When a claim for pension is pending under the second section of the act of June 27, 1890, and a new application alleging other causes of disability is filed, it is the right and duty of the attorney appointed in the original application to prosecute the claim as an entirety. The second application is but amendatory of the first, and the attorney filing it has no title to recognition. *James J. Abbott* (Asst. Sec. Reynolds), 8 P. D., 79.

(a) As to reopening and appeal.

When an attorney thinks injustice has been done his claimant by the Bureau of Pensions, it is his duty to appeal to the Department, but no additional fee can be allowed therefor. *Thomas Kenney* (Asst. Sec. Reynolds), 7 P. D., 87.

When a claim for pension has been rejected, whether on legal grounds or on its merits, and the attorney thinks an injustice has been done his client, it is his duty either to take steps to reopen the case or to appeal to the Department, and failure so to do within the time prescribed by the rules is such neglect as subjects him to a forfeiture of his title to fee. *Jackson A. Kimball* (Asst. Sec. Reynolds), 7 P. D., 133.

See also SUBTITLES: MALFEASANCE; NEGLECT.

14. Examination, claimant's failure to appear for.

See SUBTITLES: NEGLECT; NOTICE.

15. Examination of papers.

Reports of special agents may not be inspected by attorneys or claimants, and names of witnesses will not be communicated. *A. P. W. Farley* (Actg. Sec. Bell), 6 P. D. (o. s.), 161.

Attorneys will not be permitted to examine confidential communications, certificates of examining surgeons, or reports of special examiners relating to criminal charges. *In re Milo B. Stevens & Co.* (Asst. Sec. Bussey), 5 P. D., 254.

15. Examination of papers—Continued.

Order 174, prohibiting attorneys from examining certain papers on file in the Bureau of Pensions is supported by precedent and reason, and is adhered to. Citing decisions of 1833, Lewis Cass, Secretary of War; 1838, J. B. Poinsett, Secretary of War; 1850, T. Ewing, Secretary of the Interior; 1874, C. Delano, Secretary of the Interior; Z. Chandler, Secretary of the Interior. *Communication, in re E. W. Whitaker, attorney* (Asst. Sec. Bussey), 6 P. D., 179.

16. Fee, right to—generally.

The attorney who procures and files the evidence necessary to establish a claim for pension is entitled in equity to the fee allowed upon the adjudication of the claim. *Hardin Stevenson* (Asst. Sec. Bussey), 3 P. D., 225.

The appellant having performed material service, and the claim having been completed within the year to which he was entitled under rule 16 (now 12), should have been paid the fee. *Brewster Case* (in re P. J. Lockwood, March 22, 1894), cited and followed. Citing also *Olivia Joyce*, 7 P. D., 156. *Patrick Coffee* (Asst. Sec. Reynolds), 7 P. D., 338.

As appellant was entitled to recognition when the claim was reopened, and as no action on his part was thereafter necessary, he should have been paid the legal fee. *Malvin B. Whitehead* (Asst. Sec. Reynolds), 7 P. D., 427.

(a) Right to, determinable from record at time of adjudication.

The rights of an attorney are to be determined by his legal status at the time the claim is completed and without reference to the date of adjudication. If, on completion of the claim, he be not in default under rule 12, upon subsequent allowance of pension he should be paid the fee, and this whether completing evidence has been furnished by him or by some other person acting voluntarily or involuntarily as his agent. Citing *Catherine S. Leighton*, 7 P. D., 88. *Amelia L. Brewster* (Asst. Sec. Reynolds), 7 P. D., 296.

Questions of fee are to be determined from the record as it was at the time of adjudication. That record may not be changed or amended by the addition thereto of statements of attorneys made in briefs submitted by them in support of appeals filed in the Department. *Sidney M. Brownell* (Asst. Sec. Reynolds), 7 P. D., 373.

See also SUBTITLES: ABANDONMENT; ASSIGNMENT; CALL SLIPS; DEATH; DISCHARGE; DUTIES AND OBLIGATIONS; MALFEASANCE; NEGLECT; RECOGNITION; REOPENING; REVOCATION; SERVICE; SUBSTITUTION; and general title, FEE.

17. Fee contract.

See SUBTITLES: POWER OF ATTORNEY; REVOCATION.

18. Firms—person signing firm name.

It should be made to appear that the person signing a firm's name to the transfer of a case had the authority to do so. *Alexander Parks* (Sec. Schurz), 5 P. D. (o. s.), 134.

(a) Death of partner.

Where a firm of attorneys has been prosecuting a claim for pension, and before the completion of the claim one of said attorneys dies, the surviving partner will not be required to obtain a new power of attorney in his own behalf to entitle him to recognition in such claim, but he will be allowed to complete the same in the name of the firm. *Instructions* (Asst. Sec. Reynolds), 7 P. D., 281.

19. Forfeiture.

See SUBTITLES: NEGLECT; RECOGNITION.

20. Fraud.

See SUBTITLE: DISBARMENT.

21. Government employee.

An attorney who files a power of attorney in a claim within two years after his connection with the Government as a special examiner of the Bureau of Pensions is within section 190, Revised Statutes, and recognition was properly refused. *Francis M. Herrod* (Asst. Sec. Bussey), 4 P. D., 39.

22. Increase claims.

Attorneys are not recognized in applications for increase by operation of law under the act of March 3, 1883, and the opinion of Attorney-General Stanbery of October 8, 1866, is not applicable. *Cyrus Perkins* (Asst. Sec. Joslyn), 11 P. D. (o. s.), 136.

23. Indian claims.

No power of attorney in behalf of an Indian claimant for pension will be recognized, but all such claims should come through the Commissioner of the Indian Bureau. *Alsey Young Duck* (Sec. Delano), 1. P. D. (o. s.), 150.

24. Information.

See SUBTITLES: CALL SLIP; NOTICE; REQUIREMENTS.

25. Insane persons.

When a pensioner has been pronounced insane, a power of attorney executed by him is invalid. *Thomas Kenney* (Asst. Sec. Reynolds), 7 P. D., 87.

26. Malfeasance—retaining instead of filing evidence.

Appellants filed a power of attorney in the case in December, 1892. During the same month they obtained possession of the evidence necessary to complete the claim, which evidence was responsive to a call which had been made by the Bureau on the attorneys of record. Knowing that they had no status in the case, appellants deliberately withheld such evidence until eight months later, when they were accorded recognition: *Held*, That it was appellants' duty, under the circumstances, if they did not file the testimony in their possession, to return it to the claimant, so that it might be filed by her direct or forwarded to the attorneys of record. As the former attorneys were prevented by the act of appellants from filing the evidence necessary to complete the claim (that this was so is sufficiently shown by the record), said evidence, when filed, inured to the former's benefit, and they should have been paid the fee. Distinguishing *Martin D. Shirk*, May 6, 1893; *widow of John J. Phillips* (no date given). *Sarah Mellon* (Asst. Sec. Reynolds), 7 P. D., 349.

(a) Where evidence is executed before attorney.

The rule of practice, directing that evidence verified before an officer engaged in the prosecution of a claim or having a manifest interest therein shall not be accepted, is based upon substantial reasons, and should be maintained; and when an attorney files evidence taken before himself as a magistrate, he should be informed of the rule and notified that said testimony must be taken anew before an officer not interested in the prosecution of the claim. If, after such notification, an attorney persist in filing evidence verified before himself, he may be denied both recognition as attorney and fee in the claim. *William A. Robertson* (Asst. Sec. Bussey), 3 P. D., 220.

If, however, the evidence verified before an officer who is an attorney be accepted in the favorable adjudication of the claim, the Bureau having failed to notify him of the aforesaid rule of practice, such failure will be construed as a waiver of the rule itself, and the legal fee will not be denied. *Ibid.*

27. Neglect—under rule 12—generally.

The failure by an attorney for eleven months to do anything in the prosecution of a claim is neglect, forfeiting title to recognition, especially in view of the revocation of his power in this case by the claimant on that ground. Citing rules in *Charles H. Crewe*. *Elizabeth McKim* (Actg. Sec. Cowen), 2 P. D. (o. s.), 160.

The failure of attorneys to file any paper in a claim or to perform any service for more than two years is sufficient

27. Neglect—under rule 12—generally—Continued.

evidence of neglect to bring them within the purview of rule 16, regulating practice before the Bureau of Pensions, and in the absence of any sufficient cause shown therefor is conclusive evidence of abandonment, and authorizes the Commissioner of Pensions to recognize another attorney. *Almond B. Gage* (Asst. Sec. Hawkins), 2 P. D., 163.

An attorney who fails for two years to respond to a call for necessary evidence is in neglect in default of sufficient cause shown therefor, and will be considered as out. Diligence on the part of an attorney must appear; it can not be established by mere assertions that he was unable to communicate with his client, nor by the filing of any number of printed slips stating that he was not in fault. *Mother of Samuel Coan* (Asst. Sec. Hawkins), 2 P. D., 189.

Where evidence has been filed by an attorney, whether that evidence be material or otherwise, and the Bureau calls upon him for further proof, the year to which he is entitled under rule 12 commences on the date on which the call was made; and unless within that period he takes proper action in the claim, he will, at the expiration of said period, be held to be in neglect and his attorneyship will be forfeited.

The above rule is subject to the single exception, however, that where the evidence filed as aforesaid is held to be sufficient to justify the attorney in the belief that a prima facie case is established, he is entitled to information as to further requirements. In such a case his year will commence from the date on which the office call is made. Citing and affirming *Andrew Kesler*, February 24, 1894. *Meriba Hereford* (Asst. Sec. Reynolds), 7 P. D., 309.

The Bureau judges as to the sufficiency of evidence filed for establishing any fact, not the attorney. So in every instance, where an attorney fails for one year to respond to a call for evidence upon the ground that the evidence called for is unnecessary, such failure is neglect. *Darwin C. Simpson* (Asst. Sec. Reynolds), 8 P. D., 311.

(a) When claimant fails to appear for examination.

When, in a claim for increase, an order for a medical examination is not obeyed, the attorney shall be notified of the fact, and unless within ninety days from the date of the notice a satisfactory explanation of such failure is filed, the attorney shall be held to be in neglect, and his attorneyship forfeited. *Robins E. Babcock* (Asst. Sec. Reynolds), 7 P. D., 285.

27. Neglect—under rule 12—generally—Continued.**(a) When claimant fails to appear for examination—Continued.**

Appellant's failure to explain within the year allowed him the failure of claimant to appear for medical examination was neglect, and by that neglect he forfeited all right to further recognition. *Christian Albright* (Asst. Sec. Reynolds), 7 P. D., 452.

NOTE.—Rule 16, promulgated October 19, 1885, became Rule 12, January 1, 1890. See SUPPLEMENT D.

See also SUBTITLES: ABANDONMENT; DUTIES AND OBLIGATIONS; NOTICE; POWER OF ATTORNEY (d).

28. Nonresidents.

A citizen of the United States, but not one of a foreign government, residing abroad, is admissible as attorney in the prosecution of a claim. *Communication in re Thomas Lyman* (Asst. Sec. Bussey), 4 P. D., 230.

29. Notice, generally, of rejection.

It is the duty of the Bureau of Pensions to notify the attorney in a claim of the date and cause of rejection of the same. So long as an attorney shows that he is ready and willing to proceed with the prosecution of a claim by calls for status he may not be charged with neglect. *Charles H. Larned* (Asst. Sec. Reynolds), 7 P. D., 162.

(a) Where two claims (under different laws) are pending simultaneously.

The soldier filed two claims, one under the general law and one under the act of June 27, 1890. The same cause of disability was alleged in both, and both were prosecuted by appellants. The former claim was allowed; the second rejected on the ground of no benefit. Of the allowance of the general law claim appellants were promptly advised. *Held*, That under the practice notice that the claim under the general law had been allowed was sufficient notice that the claim under the act of June 27, 1890, had been rejected. *Held, further*, That appellants' failure to take action in the latter claim within ninety days from the date of said notice was neglect, and that by that neglect they forfeited their rights in the case. *Marsden Light* (Asst. Sec. Reynolds), 7 P. D., 461.

(b) Notice to claimant is not notice to attorney.

Notice to an appellant for pension or bounty land, whether in a pending or in a rejected claim, is not notice to the attorney, the latter having rights as to fee which to a certain extent are adverse to those of the former. For the protection of these rights notice to the attorney is necessary, and he can not be

29. Notice—generally, of rejection—Continued.**(b) Notice to claimant is not notice to attorney—Continued.**

lawfully deprived of them without it. This decision shall not be retroactive in effect. Case of Busher, decided October 6, 1891, is reversed, and the Larned Case (7 P. D., 162) reaffirmed. *Calista M. Hardy* (Asst. Sec. Reynolds), 7 P. D., 391.

(c) Of suspension of attorney.

Notice given by the Commissioner of Pensions to other Departments of the fact of the suspension of an attorney from practice before the Pension Office is unauthorized, and such communication should not be made until such attorney, having failed to prove his innocence, has been absolutely prohibited from practice. *Communication in re Rudolph Dirks* (Sec. Chandler), 9 L. B. (Misc.), 468.

Notice to attorneys of their suspension should state that such action has been taken by direction of the Secretary of the Interior; otherwise an appeal would lie. *Communication in re O. M. Rood* (Sec. Chandler), 9 L. B. (Misc.), 472.

See also DECLARATIONS; SUSPENSION.

30. Oath.

See SUBTITLE: QUALIFYING BY ATTORNEY.

31. Orders, insufficient publicity of.

Under-rule 12, an attorney is not chargeable with neglect for the reason that he has not complied with an order requiring additional evidence to establish a prima facie case, when the publicity given to the order is insufficient for presuming that attorneys have been notified of its contents. *Harriet R. Bostwick* (Asst. Sec. Reynolds), 8 P. D., 96.

(a) Order 174.

See SUBTITLE: EXAMINATION OF PAPERS.

32. Partners.

See SUBTITLE: FIRMS.

33. Payment.

See SUBTITLE: ASSIGNMENT.

34. Personal representatives.

Where an attorney dies leaving pension claims pending in which he was entitled to recognition, his personal representatives will not be recognized to complete such claims. *Samuel H. Lewis* (Asst. Sec. Reynolds), 7 P. D., 69.

35. Power of attorney.

Power of attorney must be filed in a case before party is duly authorized to act therein. *Martin Byrne* (Sec. Schurz), 6 P. D. (o. s.), 384.

See also SUBTITLE: QUALIFYING BY; OATH.

A power of attorney to which the signature of the claimant is not attested by two witnesses confers no authority upon an agent or attorney to appear in a pension claim, and without such authority a person can not have title to a fee. Citing case of Robert Capstick, decided January 16, 1897. *Obed A. Patterson* (Asst. Sec. Reynolds), 8 P. D., —.

An attorney's authority to represent a claimant must be evidenced by an instrument executed in strict accordance with the formalities laid down in the rules of practice. An informally executed declaration containing a power of attorney of itself confers no rights upon the attorney named therein. *Charles W. Munson* (Asst. Sec. Reynolds), 8 P. D., —.

(a) **Sections 4768, 4785, and 4786, Revised Statutes.**

Sections 4768, 4785, and 4786, Revised Statutes, contain no word nor expression that either restrains or appertains to the creation of a power of attorney in pension claims, or in the execution of fee agreements for the prosecution of such claims. *Milo B. Stevens & Co., in re Thomas R. Harney* (Asst. Sec. Bussey), 3 P. D., 152.

(b) **Latent ambiguity in.**

Where a power of attorney which is valid on its face is latently ambiguous because there are several claims to any one of which it may by its terms be applicable, extrinsic evidence is admissible for the purpose of showing to which one of such claims it was intended to apply. *R. H. Clark* (Asst. Sec. Reynolds), 8 P. D., 202.

Evidence is admissible to show that what purports to be an agreement has in truth never become such. Claimant executed a declaration on a blank containing a power of attorney to appellants, not intending to appoint them attorneys to prosecute the claim, but by oversight omitted to erase the clause referring to said attorneys; filed the same, and prosecuted the claim in person, appellants having no record of the case: *Held*, Appellants were never authorized to appear as attorneys and have no title to a fee. *Joseph S. Conklin* (Asst. Sec. Reynolds), 8 P. D., 260.

(c) **Contract for fee.**

A contract for fee may be accepted as equivalent to and as having the force of a formal power of attorney. *Widow of William L. Goit* (Sec. Kirkwood), 8 P. D. (o. s.), 310.

35. Power of attorney—Continued.**(d) Revocation of.**

In both pending and adjudicated claims, when a change of attorneys is made, the new power of attorney should contain a revocation of all previous powers of attorney, unless accompanied by a consent to change the attorney in letter or indorsement by the former attorney; but an attorney who has rendered service in the prosecution of a claim should not be superseded unless he stands suspended from practice before the Office, removes to a locality distant from the claimant's place of residence, or manifestly neglects the prosecution of the claim. *Charles H. Crewe* (Sec. Delano), 1 P. D. (o. s.), 338.

An attorney's fee follows allowance of pension and proof of service. In order that the interest of an attorney may be protected, applicants are not allowed to revoke at will a power of attorney; nor does the attorneyship cease with the death of claimant. *Henry L. R. Woods* (Asst. Sec. Bussey), 3 P. D., 239.

An agreement by an applicant to pay an attorney in a pension claim a fee upon the successful prosecution of the claim does not give to the attorney such interest in the claim as to prevent the applicant from revoking the power of attorney. *Charles W. Fitts, administrator* (Asst. Sec. Bussey), 3 P. D., 267.

See also SUBTITLE: NEGLECT.

36. Priority.

See SUBTITLE: RECOGNITION.

37. Qualifying by—oath.

No person can be recognized as an attorney in the prosecution of a pension or other claim against the United States who does not take the oath required by section 1 of the act of July 17, 1862, and unless he also files power of attorney in the particular claim which he desires to prosecute. *Instructions* (Sec. Delano), 1 P. D. (o. s.), 1.

Section 3478, Revised Statutes, requires that those only shall make the oath referred to in said section who are themselves engaged as attorneys, or on their own account, in prosecuting claims, and does not include one who is merely employed by an attorney to act for such attorney in his business of prosecuting claims. *Mark J. Maloney* (Asst. Sec. Bussey), 4 P. D., 55.

(a) Certificate of character.

Under the rules and regulations of February 1, 1886, an attorney must file a certificate from a judge of a United States, State, or Territorial court as to his character, repute, qualifications, and competency, although he may be a resident of another country. *Communication in re Thomas Lyman* (Asst. Sec. Bussey), 4 P. D., 230.

38. Recognition after forfeiture.

Where an attorney has rendered no service during the year to which he is entitled under rule 12, and there is no other attorney in the case, the Commissioner may, in his discretion, if the condition of the claim demand it, continue to recognize the former attorney, thereby restoring to him his original rights. *Olivia Joyce* (Asst. Sec. Reynolds), 7 P. D., 156.

A power of attorney, inoperative when filed because of the prior rights of another attorney, becomes operative when said rights shall have been forfeited. This doctrine has been sustained by a long line of departmental decisions and is adhered to. Appellant neglected the claim for more than a year, thereby forfeiting all right to further recognition. *Nathan R. Shappee* (Asst. Sec. Reynolds), 7 P. D., 429.

Where an attorney appears in a case and has been recognized and becomes in neglect, but has not been superseded in the attorneyship, his rights are the same as those of any attorney who is in default and is recognized through the courtesy of the Bureau; that is, he can only preserve his rights by rendering material service before the appearance of another attorney in the claim. *Moses Adams* (Asst. Sec. Reynolds), 8 P. D., —.

(a) After claim is complete.

Recognition of attorneys after claim is completed should be declined. *James E. Smith* (Sec. Schurz), 5 P. D. (o. s.), 314.

An attorney appearing in a claim under contract with applicant after a prima facie case has been made out and the claim is in the hands of a special examiner, no further services by an attorney being necessary, acquires no right to recognition and is not entitled to a fee. Citing *Sarah Robertson*, 2 P. D., 398; and distinguishing *Jesse Page*, 7 Fee Book, 152 (unpublished). *Robert McCorkle* (Asst. Sec. Reynolds), 7 P. D., 158.

(b) After rejection and abandonment.

After rejection and abandonment that attorney will acquire title to recognition who first files a sufficient declaration and valid power of attorney. Citing *George Jacob*, 7 P. D., 39; also, *Charles T. Bennett*, ib., 1; *Thomas L. Carley*, ib., 12. *Thomas Bean* (Asst. Sec. Reynolds), 7 P. D., 527.

(c) Claims under acts of February 14, 1871, and March 9, 1878.

The appellants filed in February, 1877, a power of attorney in a pending claim under the act of February 14, 1871; were recognized by the Pension Office, and their appeal was entertained by the Department. *Held*, In view of these facts, there is no reason why they should not be recognized in the claim under the act of March 9, 1878. *Azel Abel* (Sec. Schurz), 5 P. D. (o. s.), 259.

38. Recognition after forfeiture—Continued.**(c) Claims under acts of February 14, 1871, and March 9, 1878—Cont'd.**

A claim rejected under the act of February 14, 1871, on the ground of insufficient service, but admissible under the act of March 9, 1878, on the evidence filed by the attorney who filed the claim under the former act. *Held*, That he, and not the attorney who filed the claim under the latter act and who was not required to file any evidence, was entitled to recognition. *George Holter* (Sec. Schurz), 6 P. D. (o. s.), 31.

(d) Under general law and act of June 27, 1890.

A power of attorney given to prosecute a claim under the general law confers no authority to prosecute a claim under the act of June 27, 1890. *Communication to H. S. Kellogg, attorney* (Asst. Sec. Bussey), 4 P. D., 171.

(e) When letters of guardianship must be filed.

In a claim for a minor's pension under the act of June 27, 1890, an attorney is entitled to recognition under the rules of practice if he files letters of guardianship at any time before the case is ready for adjudication upon its merits. *Minors of John W. Dine* (Asst. Sec. Reynolds), 8 P. D., 297.

39. Record.

See SUBTITLES: DILIGENCE; FEE.

40. Refundment.

See SUBTITLE: ASSIGNMENT.

41. Reopening.

See SUBTITLES: DEATH OF CLAIMANT; DUTIES AND OBLIGATIONS; FEE.

42. Requirements, notice of.

Where publicity is given to orders specifying the evidence that is required in certain classes of cases, it is not necessary for the Bureau to make specific calls for such evidence in any case described in the order. Such evidence is deemed necessary for the purpose of prima facie establishing such cases, and failure to supply the same within the time fixed by the rules is neglect. *William Newman* (Asst. Sec. Reynolds), 8 P. D., 65.

43. Revival of attorneyship—none after supersedure.

Where an attorneyship has been forfeited under rule 12 and such forfeiture has been followed by the appointment and recognition of another attorney, the forfeited attorneyship can not be revived. (But this rule is not intended to apply to a case

43. Revival of attorneyship—none after supersedure—Cont'd.

where an attorney who had forfeited his rights, after similar forfeiture by a second attorney, has filed evidence that completed the claim, or to a case where, under similar circumstances, he has filed evidence and been recognized by the Bureau; but to a case that may arise in future and to cases then under consideration in which the question of recognition has not been determined.—Note to decision as published.) *Patrick Coffee* (Asst. Sec. Reynolds), 7 P. D., 338.

(a) Where there is forfeiture but no supersedure of attorney.

The rule laid down in *Coffee's* appeal (7 P. D., 338), that "where an attorneyship has been forfeited under rule 12, and such forfeiture has been followed by the appointment and recognition of another attorney, the forfeited attorneyship can not be revived," does not apply to a case where a recognized attorney has been furnished the requirements, becomes in neglect, and is not superseded by another. *Thomas Sweeney* (Asst. Sec. Reynolds), 8 P. D., 223.

44. Rules.

See, as to rule 2, SUBTITLE ASSIGNMENT; rule 12 (16), SUBTITLES: NEGLECT; RECOGNITION; rule 13, SUBTITLE: APPEALS.

45. Ruling 124.

As the issue in question allowed an original pension under the act of June 27, 1890, and not increase of pension under a ruling of the Bureau for the same degree of disability for which pension had been previously granted, ruling 124 of July 21, 1885, is clearly inapplicable. *Malvin B. Whitehead* (Asst. Sec. Reynolds), 7 P. D., 427.

46. Service—when by second, inures to benefit of first attorney.

When an attorney files completing evidence within the year allowed a former attorney under rule 12, and the claim is adjudicated within that year, the evidence thus filed inures to the benefit of the former attorney, it being presumed that he would have completed the claim within the allotted time, and the attorney filing such completing evidence has no title to fee. *Catharine S. Leighton* (Asst. Sec. Reynolds), 7 P. D., 88.

See SUBTITLE: DUTIES AND OBLIGATIONS.

(a) When by first, inures to benefit of second attorney.

The rule that what is done in an attorney's time is to be credited to him and inures solely to his benefit is subject to the further rule that before one attorney may profit by the work

46. Service—Continued.

(a) **When by first, inures to benefit of second attorney—Continued.**

performed by another he must within the year, or ninety days (as the case may be), allowed him under the rules of practice, render some material and necessary service. And such service must be actual, not constructive, i. e., it must be service performed by himself, and not service rendered by some other person. The mere right to recognition does not give title to fee. The rule is, no service, no fee. *Martha J. Craiglow* (Asst. Sec. Reynolds), 7 P. D., 517.

See also FEE.

47. State agents.

An agent appointed by a State to prosecute, without cost to applicants, claims for pension against the United States, is entitled to recognition the same as any other agent or attorney. Once recognized, so long as he conforms to the rules of practice he will be protected by them. *Jeannette Allen* (Asst. Sec. Reynolds), 7 P. D., 293.

When an officer, authorized by the laws of a State to prosecute the claims of persons residing therein, comes into a case under a properly executed power of attorney, he is subject to the Rules of Practice and is governed and protected by them. *James Sullivan* (Asst. Sec. Reynolds), 7 P. D., 519.

48. Subsequent claims.

In a case under the act of June 27, 1890, where an attorney becomes entitled to recognition upon the default of the attorney of record, and having filed a new declaration, his rights can not be affected by the fact that the claimant, through some duly authorized attorney, subsequently files another declaration, provided he calls up the case at proper intervals. *William Coleman* (Asst. Sec. Reynolds), 8 P. D., —.

See also SUBTITLES: ABANDONMENT; DUTIES AND OBLIGATIONS.

49. Substitution.

No change of attorneys will hereafter be allowed after a claim has been completed, so far as depends on an attorney. *Instructions* (Sec. Harlan), 6 L. B. P., 150.

The failure of an attorney for two years to accomplish anything in the prosecution of a claim, the inability of the applicant to carry on a correspondence with him, being unable to write, and the inability to advise with him in consequence of the distance between them, constitute sufficient grounds for

49. Substitution—Continued.

the applicant's substitution of a local attorney, and for the recognition of the same by the Bureau of Pensions. *Ruth A. Burgin* (Asst. Sec. Bussey), 3 P. D., 217.

(a) Written consent of claimant requisite to.

After April 22, 1882, in pension cases no substitution of one attorney by another will be recognized without the written consent of the applicant to the substitution of the particular person proposed to be substituted; and in cases where there is a legal contract for fee, the substitution of one attorney by another shall not be held to carry with it the rights of the former attorney to the fee contracted for by him unless the claimant shall consent thereto in writing. *Instructions* (Sec. Teller), 9 P. D. (o. s.), 208.

(b) Power of.

Power of substitution, or new power of attorney from claimant, must be filed in any claim transferred from one attorney to another. *J. L. Penniman, attorney* (Sec. Chandler), 3 P. D. (o. s.), 405.

A power of substitution, like the power of attorney under which it is granted, must be executed before an officer competent to administer oaths. See *In re J. P. L. Weems*, claim of Cephas McDonald, February 15, 1892. *Robert Bridges* (Asst. Sec. Reynolds), 7 P. D., 253.

See also SUBTITLE: ABANDONMENT.

50. Supersedure.

See SUBTITLES: DECLARATIONS; POWER OF ATTORNEY (Revocation); REVIVAL.

51. Suspension—power of Secretary.

The power of the Secretary of the Interior to suspend attorneys from practice for violation of law, rules, or regulations relating to fees in pension cases is not subject to legal limitation. *Zadoc Day* (Asst. Sec. Bussey), 3 P. D., 76.

(a) General instructions relative to.

The general instructions of March 3, 1876, are modified, so far as they relate to the Pension Office, as follows:

(1) Whenever an attorney is charged with or suspected of improper or dishonest practices in the prosecution of claims before the Pension Office, the Commissioner of Pensions should report the same to the Secretary of the Interior for his action.

(2) If the Secretary, on such report, orders the suspension of said attorney, the Commissioner of Pensions will give the latter due notice thereof, informing him that until he shall

51. Suspension—Continued.**(a) General instructions relative to—Continued.**

prove to be groundless the charges on which such order for suspension was based he will not be further recognized as an attorney by the Pension Office or the Bureaus of the Interior Department.

(3) The proof submitted by such agent or attorney for removing the charges shall be forwarded to the Commissioner of Pensions, who shall have power, in his discretion, to require the personal certificate of the judge of the Federal court or of a State court of record having common-law jurisdiction within whose district such attorney resides, showing his character and standing, which certificate shall set forth the extent of the judge's acquaintance with said attorney and the sources of his information as to his character and standing; and shall finally report the case to the Secretary of the Interior, with his opinion thereon.

(4) Whenever the Commissioner of Pensions shall receive notice of suspension of an attorney or claim agent by the head of another Department, such notice shall be at once transmitted to the Department for its action.

No attorney shall be suspended or restored except by order of the head of the Department.

Instructions (Sec. Chandler), 9 L. B., Misc., 384.

(b) Employing disbarred attorney as agent.

Knowingly employing, after the publication of the departmental order of March 3, 1876, as to suspension of attorneys, a person as subagent or correspondent who has been prohibited from practice is sufficient ground for suspension. *Gustave Arnheim* (Actg. Sec. Gorham), 9 L. B., Misc., 418.

See also SUBTITLES: DISBARMENT; NOTICE; POWER OF ATTORNEY (Revocation).

52. Title to practice.

Where a person files a declaration at a time when he is not entitled to practice in the Bureau, and is subsequently admitted to practice, the rights of no third person intervening, and subsequent to his admission he has rendered material service, and is otherwise entitled, on the allowance of the claim a fee should be paid to him. *Ida B. Higgins* (Asst. Sec. Reynolds), 8 P. D., 232.

53. Transfer.

See SUBTITLES: ASSIGNMENT; SUBSTITUTION.

See also APPEALS; BOUNTY LAND; COPIES OF PAPERS; DECLARATIONS; ELECTION; EVIDENCE (Affidavits); FEE; RECONSIDERATION.

BAR TO PENSION.

See ADULTEROUS COHABITATION; CITIZENSHIP; COMMENCEMENT (Special act); CONTRIBUTORY NEGLIGENCE; DESERTION; DISCHARGE (Dishonorable); DOUBLE PENSION; ELECTION; ILLEGITIMACY; LIMITATION; PAY AND PENSION; REMARRIAGE; RETIRED OFFICERS.

BIENNIAL EXAMINATIONS.

See CERTIFICATES; EXAMINATIONS.

BLACK HAWK WAR.

See BOUNTY LAND.

BLINDNESS.

Where a person is so nearly blind that there is only perception of light in one eye, but total inability to see objects, he is "totally blind" within the meaning of the act of June 17, 1878, as amended by the act of March 3, 1879. *John W. Anthony* (Asst. Sec. Bussey), 4 P. D., 165.

See also DISABILITIES; EVIDENCE.

BOARD OF PENSION APPEALS.

See APPEALS.

BOUNTY LAND.

1. Title, generally.
 - (a) *Under act of December 10, 1814.*
 - (b) *Under act of April 16, 1816.*
 - (c) *Under act of February 11, 1847.*
 - (d) *Under act of September 28, 1850.*
 - (e) *Under act of March 3, 1855.*
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5. Attorneys.
6. Brothers and sisters.
7. Cancellation of warrants.
8. Desertion.
9. Discharge.
10. Disloyalty.
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18. Minors.
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22. Scrip.
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 - (a) *Must have been in a war.*
 - (b) *Must have been prior to March 3, 1855.*
 - (c) *Length of.*
 - (d) *Acting assistant or contract surgeons.*
 - (e) *Black Hawk war.*
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 - (g) *"Constitution," U. S. S., service on.*
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 - (m) *Indian wars: "Rogue River," "Navajo and Apache," and "Apache."*
 - (n) *Marine Corps.*
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 - (z) *"Seminole war."*
 - (aa) *Spy.*
 - (bb) *State.*
 - (cc) *Substitute.*
 - (dd) *Teamsters.*
 - (ee) *"Texan war."*
 - (ff) *"Toledo war."*
 - (gg) *Traders' companies under Colonel Doniphan.*
 - (hh) *Volunteers.*
 - (ii) *War Department, service in.*
 - (ij) *"Winnebago disturbances."*
24. Special acts.
25. Succession of title.
26. Widows.

1. Title, generally.

Claim for bounty land can be valid only on one of the following conditions: First, soldier must have been regularly mustered into the United States service; second, that his services were paid for by the United States; or, third, that he served

1. Title, generally—Continued.

with the armed forces of the United States, subject to the military orders of a United States officer. *Betsy Weed* (Sec. Schurz), 5 P. D. (o. s.), 92.

(a) Under act of December 10, 1814.

Where a soldier was so distant that the order of February 15, 1815, to stop recruiting, could not, with the imperfect means of communication then available, have reached the officer who enlisted him by February 20, the day of enlistment, a fair contract was made by the Government which the soldier was required to fulfill, and, as he complied with the requirement, he is entitled under the act of December 10, 1814. *John Porter* (Sec. Stuart), 2 L. B. P., 107.

(b) Under act of April 16, 1816.

A person who enlisted as a soldier in the war of 1812, and served as such until commissioned, but who resigned his commission before the close of the war, is entitled, under the act of April 16, 1816, to bounty land, provided the enlistment was for five years or during the war. *Atty. Gen. Wirt*, 1 Op., 273.

(c) Under act of February 11, 1847.

To show title under section 9 of the act of February 11, 1847, a claimant must show his enlistment and regular muster into service; that he continued in the service for twelve months, and that he was honorably discharged therefrom, or, if discharged before twelve months of service, that such discharge was due to wounds or sickness due to service. *Atty. Gen. Clifford*, 4 Op., 718.

Those entitled to bounty land under the ninth section of the act of February 11, 1847, are (1) those of the Regular Army enlisted for twelve months or for a longer period; volunteers regularly mustered into a volunteer company "who have served or may serve during" the war with Mexico, and are then, at the end of the war, discharged; (2) those killed or dying of wounds received or sickness incurred in the course of such service, and (3) those who are discharged before the expiration of their term of service "in consequence of wounds received or sickness incurred in the course of such service." *Atty. Gen. Johnson*, 5 Op., 147.

Title to bounty land, under the act of February 11, 1847, is not impaired by the promotion, in May, 1847, to be a commissioned officer, before the expiration of his enlistment, of a private who subsequently continued in the service to the end of the war. *Charles Krohne* (Sec. Ewing), 1 L. B. P., 115.

1. Title, generally—Continued.**(c) Under act of February 11, 1847—Continued.**

Title to bounty land, under act of February 11, 1847, is acquired by soldiers who were mustered into service, were paid for service, and were honorably discharged by officers of the United States. *Communication* (Sec. Stuart), 2 L. B. P., 105½.

The act of February 11, 1847, applies only to (1) soldiers who were living at the date of its passage and were then in the enlisted service; (2) those who thereafter enlisted, and (3) the family or relatives of such only. *Matilda Kerren* (Asst. Sec. Reynolds), 7 P. D., 443.

(d) Under act of September 28, 1850.

Persons who have received bounty land under any previous act are not entitled under act of September 28, 1850. *Communication to Thomas D. Brown* (Sec. Stuart), 2 L. B. P., 27.

(e) Under act of March 3, 1855.

Title to bounty land is acquired, under the act of March 3, 1855, not only by militia or volunteers serving under the general command of the United States and in time of war, but also by those rendering military service, whether in war or not, and whether under the authority of the United States, or of a State or Territory, if the United States has paid for the service. Service rendered in removing the Cherokee Indians is embraced by the act and gives title. *Atty. Gen. Cushing*, 7 Op., 606.

The act of March 3, 1855, applies (1) to those soldiers living at the date of its passage, and (2) to the widow or children of those who had died prior thereto. *Matilda Kerren* (Asst. Sec. Reynolds), 7 P. D., 443.

2. Accrued rights—section 5597, Revised Statutes.

The provisions of the act of February 11, 1847, allowing bounty land to the fathers, mothers, brothers, and sisters of enlisted men in the Regular Army, are not repealed by the provisions of sections 2418 and 5596, Revised Statutes, but their rights under the act of February 11, 1847, and May 27, 1848, are accrued rights, and are reserved by section 5597, Revised Statutes. *Mary J. Furnish* (Sec. Schurz), 6 P. D. (o. s.), 283; *Thomas Bales*, *ibid.*

If a claimant was entitled to bounty land under the law as it existed prior to the passage of the Revised Statutes, his right still exists by virtue of section 5597, Revised Statutes. *Daniel S. Lockridge* (Asst. Sec. Hawkins), 2 P. D., 368.

3. **Administrators—proof of administration.**

It appearing that the administrator in this case is an attorney in suspension from practice before the Pension Bureau on account of irregularities, and that he has indulged in numerous fraudulent practices relative to bounty-land claims, that his purported appointment as administrator is in the State of New York (whereas the alleged intestate when last known to be living was in the State of Kentucky), nearly twenty years after the issuance of the bounty-land warrant herein, and its return to the Pension Office by the attorney of the warrantee, with the statement that said warrantee could not be found, and was supposed to be dead, it is held the Pension Office should investigate fully all the facts as to the alleged appointment as administrator, and should require the names and addresses of the heirs and legatees, and all other facts necessary to determine the honesty and legality of the alleged administrator's title to claim said warrant. *James East* (Sec. Delano), 2 P. D. (o. s.), 212.

An administrator must file a certificate of the court appointing him, setting forth the date, place of death of the original claimant, the ages, and names of the places of residence of all the heirs, and their relationship to the claimant, and the ground of his appointment, as heir or creditor. *Instructions* (Sec. Delano), 2 P. D. (o. s.), 417.

(a) **Have no power to assign the deceased's warrant.**

The administrator has no power to assign a land warrant issued to his intestate, as such warrants are regarded as real estate and descend to the heirs and not to the administrator. Citing opinions of the Attorney-General. *Heirs of Panter Laws* (Sec. Delano), 2 P. D. (o. s.), 291.

4. **Assignment of warrant.**

Assignment of warrant by warrantee must be made in due form in order that anyone claiming under it may be recognized on appeal. *Martin Byrne* (Sec. Schurz), 6 P. D. (o. s.), 468.

Whether the assignment of a bounty-land warrant, purporting to have been made by the warrantee, was actually made by him is a question which pertains to the business of the General Land Office. *Sister of Samuel N. Tippet* (Sec. Teller), 12 P. D. (o. s.), 278.

See SUBTITLE: ADMINISTRATORS.

5. **Attorneys—delivery of warrant to.**

No warrant will be delivered to attorneys, agents, or others acting in their behalf until the claimant shall be communicated

5. Attorneys—delivery of warrant to—Continued.

with directly, advised of the proposed issue, and has filed in the Pension Office his assent to the delivery of the warrant to such attorney, agent, or other person. *Instructions* (Sec. Delano), 2 P. D. (o. s.), 417.

(a) Are not recognized in applications for copy of discharge.

As under the uniform practice, extending over many years, attorneys are not recognized in applications for copies of certificates of discharge filed in bounty-land claims, the refusal to recognize the attorney in this case is approved. *Joseph Detrich* (Sec. Teller), 22 Records of Letters Sent (Misc.), 465.

(b) Fees of attorneys under act of June 20, 1878.

The act of June 20, 1878, repealed all of the provisions in relation to fees in bounty-land claims filed after the passage of said act, or which were pending at the date of passage of said act, and which had not prior thereto been represented by an agent or attorney, and in lieu thereof made no provision with reference to fees in bounty-land claims, but the question of fees in such cases was left an open one between claimants and attorneys, except that the Department has supervisory action in cases of extortion, deception, or fraud. *S. V. Niles, attorney* (Sec. Schurz), 5 P. D. (o. s.), 374.

6. Brothers and sisters—do not succeed to soldier's title.

There is no law providing for the succession of brothers and sisters to soldier's right to bounty land. *Sisters of John G. Foster* (Sec. Schurz), 6 P. D. (o. s.), 282.

(a) Title under section 2428 and under section 2418, Revised Statutes.

Under section 2428, Revised Statutes (part of the act of March 3, 1855), brothers and sisters of a deceased soldier are not entitled to bounty land; and under section 2418, Revised Statutes, such are not entitled unless the decedent's service in the Black Hawk war was not less than thirty days. *Half-brothers of Zadoc Mendenhall* (Sec. Kirkwood), 8 P. D. (o. s.), 321.

(b) Of Navy seamen in Mexican war.

The sisters of a deceased seaman in the Navy who was in the Mexican war are not entitled to bounty land. *Sister of Levi H. Cole* (Sec. Teller), 9 P. D. (o. s.), 217.

(c) Half-sisters—generally.

Surviving sisters of the half blood of deceased soldiers who, at their demise, were entitled to bounty lands from the Government are equally entitled with the brothers and sisters of

6. Brothers and sisters—Continued.**(c) Half-sisters—generally—Continued.**

the whole blood to receive such bounty, or the money in its stead, under the act of May 27, 1848. *Atty. Gen. Toucey*, 5 Op., 26.

(d) Half-sisters, under laws of Indiana.

Under the statutes of Indiana (where the soldier resided) half-sisters of a soldier may inherit the right to bounty land. *Finley Andrews* (Sec. McKennan), 1 L. B. P., 228.

(e) Illegitimate sisters of illegitimate brother.

The illegitimate sisters of an illegitimate deceased brother (leaving neither wife, children, nor other relatives) are unquestionably entitled to his bounty land under the act of February 11, 1853 (1847). *Communication* (Sec. McClelland), 3 L. B. P., 71.

7. Cancellation of warrants.

The Government has the right to cancel a warrant obtained by fraud, although it has passed into the hands of an innocent purchaser; as held by *Atty. Gen. Wirt*, December 26, 1819. *Communication to A. Buckingham in re Samuel B. Doyle* (Sec. Ewing), 1 L. B. P., 148.

See decision following.

The Commissioner of Pensions has no authority to cancel military land warrants in the hands of assignees, and no jurisdiction to determine whether the assignee of the warrant is an innocent holder or purchaser thereof; but when it appears by the record of the Pension Office that a warrant was fraudulently procured, the General Land Office should be furnished with a statement of the facts thus shown. *Communication* (Sec. Kirkwood), 8 P. D. (o. s.), 359.

(a) Warrant may not be canceled after warrantee's death.

A warrant issued to one person during his life can not, after his death, be recalled and a warrant issued to the person who would have acquired title by the death of the other before the issue of the warrant; but the warrant becomes the proper subject of judicial decision. *Communication to I. W. Anderson in re Jacob Walker* (Sec. Ewing), 1 L. B. P., 160.

A certificate or warrant issued jointly to several cowarrantees may not be recalled or canceled after the death of any of them. *Matilda Kerren (widow)* (Asst. Sec. Reynolds), 7 P. D., 443.

7. Cancellation of warrants—Continued.**(b) Warrant issued after death of warrantee is void.**

A warrant issued after the death of the soldier is void and should be canceled; and the surviving widow or minor children should file a new application. *Communication to Daniel T. Jones, H. R.* (Sec. Stuart), 2 L. B. P., 76.

A warrant issued after the death of the warrantee named therein is void, and the patent secured thereon is alike void. *Heirs of Panter Laws* (Sec. Delano), 2 P. D. (o. s.), 291.

(c) Effect of act of June 3, 1858, on cancellation.

If a warrant, issued subsequent to the death of the warrantee named therein, and prior to the passage of the act of June 3, 1858, be retained by the heirs until after the passage of said act, instead of being returned to the office for cancellation, the office will have no right thereafter to cancel it, but title thereunder would vest in said heirs under said act; but if such warrant was, prior to the passage of said act, recalled and canceled by the office shortly after its issuance, on learning of the previous death of the warrantee named therein, a duplicate warrant should issue. *Widow of Royal Grinnell* (Sec. Brown- ing), 6 L. B. P., 268.

See SUBTITLE: ERASURES AND REWRITING.

8. Desertion or dishonorable discharge bars from bounty land.

Desertion or dishonorable discharge precludes title to bounty-land warrant. *Matthew Totten* (Asst. Sec. Reynolds), 7 P. D., 33.

9. Discharge—prior to termination of enlistment.

Title to bounty land is not acquired by a soldier who enlisted to serve twelve months in the Mexican war and was discharged honorably before the expiration of his term of enlistment, or before the muster out of his company, without having been wounded or sick. *James Coleman* (Atty. Gen. Clifford), 4 Op., 718.

See decisions following.

Where service continued to the end of Mexican war and then soldier is honorably discharged against his wishes, although the term for which he enlisted had not expired: *Held*, That such service gave title to bounty land. *John Hasson* (Atty. Gen. Johnson), 5 Op., 147.

A soldier who is honorably discharged, on account of disability, before the expiration of his period of service is entitled to the amount to which he would have been entitled for the full period. *Communication to R. B. Blount* (Sec. Stuart), 2 L. B. P., 43.

9. Discharge—Continued.**(a) Nature of discharge, as affecting title.**

Discharges given for urgent private reasons, or to minors or others on the application of their friends, were considered as "honorable" unless forfeited for crime or misconduct, though the soldier, having been released from his agreement before the expiration of his service, for his own private benefit, was not considered as entitled to the bounty land or three months' extra pay. *Communication of R. Jones, Adjutant-General's Office, to the Secretary of the Interior, in re Elijah J. Peyton; Mayo & Moulton, 547.*

Title to bounty land under the act of February 11, 1847, is not impaired by the fact a soldier was discharged at his own request, or at that of his friends, he having served to the end of the Mexican war. *Samuel Reese (Sec. Ewing), 1 L. B. P., 164.*

(b) Discharge by habeas corpus.

This soldier, who was in the Mexican war, was shown by the records to have enlisted for five years, but subsequent to the close of the war, and before the expiration of the five years, he sued out a writ of habeas corpus and was discharged thereon from the custody of the officer on the ground that his enlistment was "during the war." *Held, Such judicial determination of the question is superior to the record and should govern the adjudication of his claim for bounty land under the act of February 11, 1847. James Bernard (Actg. Sec. Goddard), 1 L. B. P., 42.*

See DESERTION; DISCHARGE 4; SERVICE (Generally).

(c) Discharge, death prior to—heirs entitled.

Under the act of February 11, 1847, the heirs of a soldier who served during the Mexican war and died prior to and while waiting for discharge are entitled to bounty land, whether his death cause originated while he was in line of duty or not. *John F. Talbert (Sec. Ewing), 1 L. B. P., 95.*

(d) Discharge, effect of selling.

In the case of soldiers applying for bounty land who have sold their discharges, an act which the law declares illegal, the Department long since determined not to interfere, but to leave the rights of the parties to be adjudicated by the courts. *Communication to J. B. Woodfin (Sec. Stuart), 2 L. B. P., 58.*

Where soldier disposed of his discharge in violation of law, and, subsequent to his death, warrant was granted, and by a fraudulent assignment it was sold and located and a patent was issued for the land, the application by heir for a new warrant should be rejected under the decision of the Department of

9. Discharge—Continued.

(d) Discharge, effect of selling—Continued.

April 17, 1851, as the subject should be left for judicial settlement. The heir of soldier can not have a better title than the soldier himself would have if surviving. *Bernard Flynn* (Sec. Schurz), 4 P. D. (o. s.), 219.

10. Disloyalty bars from bounty land.

The prohibition contained in the joint resolution of March 2, 1867, making it unlawful for any officer of the United States to pay any account, claim, or demand against the Government which accrued or existed prior to April 13, 1861, in favor of any person who promoted, encouraged, or in any manner sustained the rebellion, applies to claims for bounty-land warrant. *Minors of Benjamin H. May* (Sec. Cox), 7 L. B. P., 32; *Phillip Hoppel* (Sec. Schurz), 5 P. D. (o. s.), 151.

Proof of loyalty should be required of persons residing in the late insurrectionary States who claim bounty-land warrants, and the testimony of the claimant, supported by that of two credible witnesses, should be accepted in any case as sufficient. *Instructions* (Sec. Chandler), 3 P. D. (o. s.), 125.

The question of disloyalty, as affecting a bounty-land claim, is governed by the joint resolution of March 2, 1867, and the Department adheres to the views expressed January 18, 1876 (Sec. Chandler). *Joseph Enow and William H. Ketchum* (Actg Sec. Gorham), 3 P. D. (o. s.), 480.

Persons who aided or abetted the rebellion are not entitled to bounty land under the act of March 3, 1855 (section 2425 et seq., R. S.). Pardon by the President does not restore the right. *Watt T. Cluverious* (Sec. Schurz), 4 P. D. (o. s.), 395.

A soldier of the war of 1812 lived in Tennessee during the late rebellion: *Held*, That his widow, in bounty land claim, should prove his loyalty. *Julia G. McDonald* (Sec. Schurz), 4 P. D. (o. s.), 467.

The joint resolution of March 2, 1867, applies to bounty-land claims adjudicated subsequent to that date, but not to claims adjudicated prior thereto; and where a warrant issued prior to that date is lost, proof of loyalty is not essential under an application for a duplicate warrant; and even if a person had been disloyal, the President's proclamation of December 25, 1868, placed any such persons on the same footing as if they had never been guilty of treason. Citing *U. S. v. Padel-ford*, 9 Wallace, 531; *Knote v. U. S.*, 5 Otto, 149; *Young v. U. S.*, 7 Otto, 39. *Heirs of widow of John H. Dent* (Sec. Kirkwood), 8 P. D. (o. s.), 88.

10. Disloyalty bars from bounty land—Continued.

Service in the Confederate army is a bar, under the act of March 2, 1867 (now section 3480, Revised Statutes), to a claim for bounty-land warrant under the act of March 3, 1855. *Son of Richard Booth* (Asst. Sec. Hawkins), 2 P. D., 299.

Claimant, as widow, being 64 years of age at the commencement of the rebellion and therefore unable to be active on either side, and a resident of Tennessee, a State alternately swept by the armies of the Confederacy and by those of the Union, and having refused to aid secession, and made oath to her loyalty, she is not debarred by the provisions of the joint resolution of March 2, 1867 (now section 3480, Revised Statutes), from bounty-land warrant. Overruling former decision, L. B. Zb, 327. *Widow of Charles Lesuer* (Asst. Sec. Bussey), 4 P. D., 202.

Applicants for bounty land under the act of March 3, 1855 (section 2425, Revised Statutes), must show that during the late rebellion against the authority of the United States they were known to be opposed to such rebellion and distinctly in favor of its suppression. (Section 3480, Revised Statutes.) *Martha M. Welsh, widow* (Asst. Sec. Reynolds), 8 P. D., 163.

(a) Pardon does not remove bar of disloyalty.

A pardon does not authorize the allowance of a bounty-land warrant to a person whose sympathies were not known to be against the late rebellion and in favor of its suppression. *Martha M. Welsh, widow* (Asst. Sec. Reynolds), 8 P. D., 163. See *Watt T. Cluverious* and *Heirs of widow of John H. Dent*, ante.

11. Double warrants—when to soldiers.

Every noncommissioned officer and soldier enlisted since the 10th of December, 1814, is entitled to a bounty of 320 acres of land, provided that he obtain, on his discharge from the service, a certificate from the commanding officer of his company, battalion, or regiment, that he had faithfully performed his duty while in service. *Atty. Gen. Rush*, 1 Op., 184.

Two warrants for bounty land may be issued to one person for two separate periods of service in the Mexican war. *James W. Anderson* (Sec. Schurz), 6 P. D. (o. s.), 73.

(a) Contra—but one warrant for combined terms of service.

No person is entitled to more than one warrant, though he may have performed service which, if rendered by several individuals, would entitle each to a warrant. *Communication to I. C. Pichett* (Sec. Stuart), 1 L. B. P., 252.

11. Double warrants—when to soldiers—Continued.**(a) Contra—but one warrant for combined terms of service—Continued.**

Different terms of service by the same individual are to be consolidated, and one warrant for 40, 80, or 160 acres issued for the aggregate, and not several warrants for the several terms of service. *Communication* (Sec. Stuart), 2 L. B. P., 33.

(b) Widow of two husbands, not entitled to double warrant.

A widow who has received bounty-land warrant for 160 acres on account of her first husband, can not receive another warrant on account of her second husband. *Widow of Alexander Woolworth* (Sec. McClelland), 4 L. B. P., 65.

A widow who is the wife, successively, of two men, each of whom rendered service which would entitle him, if living, to bounty-land warrant for 160 acres, is entitled to but one warrant for 160 acres. *Communication to W. P. Richardson* (Sec. Harlan), 5 L. B. P., 455.

12. Duplicate warrants, generally.

A warrant having been issued to the soldier in his lifetime, the fact of his having been subsequently defrauded of the warrant gives the widow no claim to a second warrant. *Edward Volk* (Sec. Ewing), 1 L. B. P., 105.

A duplicate should not be issued where the original is known to be in existence and claimed adversely by a party other than the claimant for reissue. Since, by the regulations established by the Commissioner of the General Land Office, land warrants may be assigned in blank and pass from hand to hand, the holder who desires to locate the same writing in his name in the blank, and since he who is the assignee is decided by inspection, it will be necessary, in the case of land warrants which have been assigned by the warrantee, that the applicant for a duplicate prove complete title derived in regular succession from the warrantee by assignment and in writing. *Communication* (Sec. Thompson), 4 L. B. P., 511.

The innocent purchaser of a bounty-land warrant which has been canceled is entitled to a new one. *Claude Pereur* (Sec. Usher), 5 L. B. P., 214.

The Department must have positive proof that the original warrant was obtained through fraud before issuing a second warrant. *William Chambers* (Sec. Schurz), 5. P. D. (o. s.), 208.

Triplicate warrants may be issued. *Charles Kinsolver* (Sec. Schurz), 6 P. D. (o. s.), 75.

12. Duplicate warrants, generally—Continued.**(a) Duplicate warrants when original is lost.**

Where a bounty-land warrant, forwarded to the person entitled thereto by mail or otherwise, is lost, after due publication and proof thereof of the loss, application for a reissue, and the filing of a caveat against the issue of a patent, the party entitled should receive a duplicate without being compelled to prove the actual destruction of such warrant. *Father of Michael H. Morgan* (Sec. Ewing), 1 L. B. P., 64.

A duplicate warrant, where the original is lost in mailing, should be in favor of the party to whom the original was issued, and be delivered to the assignee upon establishment, in the usual manner before court, of the execution of the lost assignment. *Instructions* (Sec. Ewing), 1 L. B. P., 112.

When the party sending a warrant, the party to whom it is sent, and the postmaster at its destination, have made oath to its sending and nonreceipt, a duplicate warrant should be issued; such evidence being preserved in the Pension and General Land Offices as will prevent the improper use of the original. *James C. Young* (Sec. Ewing), 1 L. B. P., 116.

A duplicate certificate of location may be issued on satisfactory evidence of the loss in the mails of the original, and delivered to the person entitled to the possession of the original; but the transfer of title when the assignment is lost must be settled in a court of justice. *Robert F. Webb et al.* (Sec. Ewing), 1 L. B. P., 131.

Duplicates of warrants may issue under the act of June 23, 1860, if the original be lost or destroyed. Embezzlement by an authorized agent is not within the statute, but the loss or destruction of the warrant must be shown. *Communication to George A. Hitchcock* (Sec. Browning), 6 L. B. P., 244.

In any case in which it shall be proved to the satisfaction of the Commissioner of Pensions that bounty-land warrant has been lost, except lost in General Land Office, duplicate may issue. *Thomas Dix* (Sec. Schurz), 4 P. D. (o. s.), 353.

Where it satisfactorily appears that more than thirty years have elapsed since the issue of the original warrant, which is claimed to have been lost: *Held*, That the facts justify the issue of a duplicate warrant, a caveat having been filed against issuing patent on the original warrant. *James W. Anderson* (Sec. Schurz), 6 P. D. (o. s.), 18.

Where it satisfactorily appears that more than twenty-nine years have elapsed since the issue of the original warrant, which is claimed to have been lost, the facts warrant the issue

12. Duplicate warrants, generally—Continued.**(a) Duplicate warrants when original is lost—Continued.**

of a duplicate warrant, a caveat having been filed against issuing patent on original warrant. *Widow of William Ray* (Actg. Sec. Bell), 7 P. D. (o. s.), 169.

13. Embezzlement of warrant.

See SUBTITLE: DUPLICATE WARRANTS (a).

14. Erasures and rewriting.

As a warrant does not constitute a part of the legal title to land, and is not an assignable subject, it need not be sent to the Secretary for cancellation because of erasures or rewriting thereon to correct errors; but if such erasures occur in patents, which are muniments of title, the case would be different; though if the Commissioner of Pensions would note that such erasures and rewriting were made before signing the warrant the defect would be cured. *Communication to Third Auditor* (Sec. Teller), 2 L. B. P., 57.

15. Fraudulent warrants—in hands of innocent assignee.

A warrant fraudulently obtained in the name of a person deceased without heirs or minors, or of a fictitious person, is a nullity, and can not be lawfully assigned, and may be rejected or canceled by the Commissioner of the General Land Office; but a warrant having been issued to a person capable of assigning, even though fraud and irregularity be used in securing same, the title of a person innocently purchasing it is not affected by such irregularity or fraud, and the Government can not cancel the warrant by reason of such fraud. *Atty. Gen. Cushing*, 7 Op., 657.

Bounty-land warrants, regularly issued, though they may have been procured by fraud, or issued on insufficient evidence, are valid against the Government in the hands of innocent holders, without notice of the fraud. *Communication* (Sec. Stuart), 2 L. B. P., 74.

A bounty-land warrant having been issued to a person capable of assigning, even though fraud and irregularity be used in securing the warrant, the title of a person innocently purchasing the warrant is not affected by such irregularity or fraud, and the Government can not cancel the warrant by reason of such fraud. *Samuel Love* (Sec. Schurz), 5 P. D. (o. s.), 164.

(a) Fraudulent issue to wrong person does not affect rightful claimant.

The fact that a warrant was fraudulently obtained should not prejudice the claim of a person legally entitled. *Heir of Philip S. Ambrose* (Sec. Ewing), 1 L. B. P., 13.

15. Fraudulent warrants—Continued.**(a) Fraudulent issue to wrong person does not affect rightful claimant—Continued.**

The issuance of a warrant to a wrong person on a forged certificate does not satisfy the just claim of the actual soldier, his widow or heirs, even though a patent is issued on such warrant. *Joseph Redding* (Sec. Ewing), 1 L. B. P., 105.

16. Half-pay commutation bars bounty land.

Allowance of half pay under the act of April 16, 1816, as commutation for bounty land, extinguishes title to latter. *Anna Pulsifer* (Sec. C. B. Smith), 5 L. B. P., 53.

17. Insane and imbecile claimants.

Declaration for a lunatic should be made by a legally appointed committee, who will have control of the warrant, for the lunatic's benefit, if issued. *Communication to R. R. Read, in re Samuel Pogue* (Sec. Stuart), 2 L. B. P., 40.

In the case of an imbecile widow of a soldier, declaration and proof should be made by guardian or committee, if one has been appointed, and where no guardian has been appointed the facts required to establish her claim may be shown by the deposition of one or more credible disinterested witnesses. *Communication to Senator Dickinson* (Sec. Stuart), 2 L. B. P., 18.

18. Minors.

Minority does not create incapacity to take bounty land any more than bounty in money or pay. *Atty. Gen. Rush*, 1 Op., 184.

(a) Appointment of guardians.

The guardians of minor children who are embraced by the act of September 28, 1850, should be appointed in the county and State where the children reside. *Communication to Edward Haviland, in re Amos Ireland* (Actg. Sec. Graham), 2 L. B. P., 4.

(b) Must have been minors on September 28, 1850, under act of that date.

Those only are minors within the meaning of the act of September 28, 1850, who were minors at the date of the passage of that act. *Communication to Thomas Maxcell* (Actg. Sec. Graham), 2 L. B. P., 3.

(c) Must have been minors on March 3, 1855.

Under the act of September 23, 1850, on the death of the soldier leaving no widow, bounty land on his account goes to those children who were minors on March 3, 1855. *Heirs of Panter Laws* (Sec. Delano), 2 P. D. (o. s.), 291.

See THIS SUBTITLE (e).

18. Minors—Continued:**(d) Limitation as to claims under old laws.**

Claim of a child of a soldier was rejected on the ground that claimant was not a minor on the 3d day of March, 1855, and, therefore, not entitled under act of that date. Appeal was taken asking consideration of case under earlier bounty-land laws: *Held*, That the benefits of the bounty-land acts of December 24, 1811, January 10, 1812, February 6, 1812, January 10, 1813, and December 10, 1814, were restricted by section 1 of the act of April 16, 1816, to those who should prove title before March 1, 1818, and that the date for the completion of claims under those laws was extended from time to time until the 26th day of June, 1858, when they expired by limitation. *Julia Moore* (Sec. Schurz), 4 P. D. (o. s.), 333.

(e) When not entitled under sections 2425 and 2418, Revised Statutes.

A child of a deceased soldier, who, if living, would be entitled to bounty land under the act of September 28, 1850, is not entitled under section 2418, Revised Statutes; and if such child was over twenty-one years of age on March 3, 1855, it is not entitled under section 2425, Revised Statutes, or under any other law. *Child of Joseph P. Kennedy* (Sec. Kirkwood), 8 P. D. (o. s.), 304. Cited as applicable in *Zadoc Mendenhall*, *ibid.*, 321.

(f) Minor is not entitled during widow's life.

The minor child of a deceased soldier is not entitled to bounty land during the lifetime of the soldier's widow. *Minors of Michael Madden* (Asst. Sec. Reynolds), 7 P. D., 34.

19. Mothers—when entitled under act of February 11, 1847.

A soldier's mother is entitled to bounty-land warrant under the act of February 11, 1847, only in case he died before issue of the warrant. *Jacob Walker* (Sec. Ewing), 1 L. B. P., 160.

(a) Under section 2418, Revised Statutes.

Mothers of soldiers who served between the commencement of the war of 1812 (June 18, 1812) and the 3d day of March, 1850, as well as the mothers of soldiers who served in the war with Mexico, are entitled to bounty land under section 2418, Revised Statutes. *Mother of Jordan Morgan* (Sec. Schurz), 7 P. D. (o. s.), 76.

20. Patent being issued, Government has no further jurisdiction.

If the patent for bounty land is issued the Government has no further control or responsibility in the matter, and no additional claim can be recognized. *Communication to Thomas D. Brown* (Sec. Stuart), 2 L. B. P., 27.

21. Reinstatement.

A warrant which has been canceled because of a forged assignment by a person representing himself to be the warrantee can not be reinstated. Citing Joseph Nippers, 2 L. B. P., 102. *John H. Smart* (Sec. McClelland), 3 L. B. P., 90.

22. Scrip.

Issue of a Treasury warrant under the provisions of section 7 of the act of February 11, 1847, in lieu of 160 acres of land, claimant having elected to receive such scrip, is a bar to bounty land. *William P. Reid* (Sec. Schurz), 5 P. D. (o. s.), 144.

Where a claimant has once exercised the option given him by the second proviso in section 9 of the act of February 11, 1847, and, pursuant to his election, scrip is regularly issued to him, he may not again elect to take a certificate, but must abide by his first decision. *Atty. Gen. Clifford*, 4 Op., 642.

23. Service—generally.

The acts of January 11, 1812, and February 11, 1847, were inducements held out for the purpose of increasing the rank and file of the Army, and partook of the nature of the consideration of a contract, while the act of September 28, 1850, offers a gratuity. *Communication* (Sec. Stuart), 2 L. B. P., 7.

Under act of September 28, 1850, the payment of a fine in lieu of service does not give title, and an honorable discharge is indispensable in all cases. *Communication to G. W. Watson* (Sec. Stuart), 2 L. B. P., 24.

There being neither record nor parol evidence of service, and claimant not having, according to his own statement, marched to the seat of war, the claim is inadmissible on either ground. *James Inglis* (Sec. Thompson), 4 L. B. P., 452.

Without trial or an opportunity to defend himself, this soldier was directed, by the order of Brigadier-General Wool, to leave the country, but on presentation of the facts to the President was directed by the latter to return to his command and report for duty. The order was not directed to him, however, and the War Department has furnished no evidence that he was ever apprised of its existence. The burden of proving that he was not willing to serve out his term is, therefore, upon the Government, and he is entitled to bounty land accordingly. *Jason H. Hunter* (Actg. Sec. Goddard), 1 L. B. P., 220.

(a) Must have been in war.

Although claimant's service as teamster between Forts Leavenworth and Kearney in July, 1847, was performed during the time of the Mexican war, the claimant was not actually

23. Service—Continued.

(a) Must have been in war—Continued.

or constructively employed in that war, and the decisions of the Department have been uniformly to the effect that performance of service during the war, but remote from the seat thereof and not connected therewith, is not that for which bounty land is provided in the act of March 3, 1855. The service in Thomas J. Basye, Franklin Hutson, and Mosias A. Wilbourne, decided April 8, 1858, June 11, 1862, and May 24, 1864, respectively, was almost identical with this claimant's. *William L. Wilson* (Sec. Schurz), 4 P. D. (o. s.), 473.

Service during but not in the Mexican war does not confer title to bounty land. Service must have been in the war. *John P. Alston* (Sec. Delano), 2 P. D. (o. s.), 272.

A skirmish or battle with the Indians or others not in a regularly recognized war does not give title under act of March 3, 1855 (now section 2425, Revised Statutes). Service on the Texan frontier in 1852 and 1853 was in the nature of police duty and was not in a war. *Martin Trimmer* (Sec. Schurz), 6 P. D. (o. s.), 49.

Service must have been in the war to give title. Service rendered after treaty of peace is not to be considered. *Samuel Davis* (Actg. Sec. Bell), 7 P. D. (o. s.), 186.

Soldiers or sailors not engaged at the seat of war with Mexico not entitled to bounty land. *James Murphy* (Actg. Sec. Bell), 7 P. D. (o. s.), 166.

To entitle a claimant to bounty land under the act of March 3, 1855, service must have been rendered at the seat of war. *Martin Tubbs* (Asst. Sec. Hawkins), 1 P. D., 187.

To entitle an applicant to a bounty-land warrant under section 2425, Revised Statutes (act March 3, 1855), he must have served at the seat of the war with Mexico for at least fourteen days. *Charles T. Loomis* (Asst. Sec. Bussey), 5 P. D., 35.

(b) Must have been prior to March 3, 1855.

Service subsequent to March 3, 1855, does not entitle to bounty land, even though the party was in battle. *Communication in re Henry Heydenreich* (Sec. Harlan), 5 L. B. P., 462.

Service subsequent to March 3, 1855, does not entitle to bounty land under the act of that date and supplemental act of May 14, 1856. *Julien Alire* (Sec. Thompson), 4 L. B. P., 449.

See contrary decision by Court of Claims, January 8, 1866, and 6 Wall., 573.

23. Service—Continued.**(c) Length of service.**

Full term of fourteen days' service is necessary to give title to bounty land under act of March 3, 1855 (section 2425 et seq., R. S.). Where the term falls short, in computing travel service, by twelve-twentieths of a day, credit is not to be given for a full day. *Widow of Samuel Benjamin* (Sec. Schurz), 7 P. D. (o. s.), 49.

Troops in the service of the United States in any of the wars mentioned in the act of September 28, 1850, whether in garrison or in the field, are entitled according to the length of actual service. *Communication to Nicholas Haight* (Sec. Stuart), 2 L. B. P., 41.

A soldier who received a furlough on account of sickness and was afterwards prevented from rejoining his company by its removal, meantime, to a distant part of the country, is entitled for the period from enlistment to the removal of his disability. *Communication to John Bowman in re James Taylor* (Sec. Stuart), 2 L. B. P., 39.

In regard to troops called out by State authority during the war of 1812, the time paid for by the United States is the test of the length of service. *Communication* (Sec. Stuart), 2 L. B. P., 51.

(d) Acting assistant or contract surgeons.

A surgeon employed under a contract with the colonel of the regiment as an assistant surgeon is not entitled to bounty land, as his was not a military engagement under a commission, nor by appointment, nor by a voluntary offer of service as a soldier or as an assistant surgeon. *Adolphus Wislezemus* (Sec. Thompson), 4 L. B. P., 329.

Contract surgeons are not entitled to bounty land under act of March 3, 1855. *R. L. Graves* (Sec. Schurz), 4 P. D. (o. s.), 125.

(e) Black Hawk war.

As the company in which this soldier served was not engaged in or at the seat of the Black Hawk war, he is not entitled to bounty land. *George W. Elliott* (Sec. Stuart), 2 L. B. P., 60.

Not having been mustered into the service for or engaged in or paid by the United States for service in the Black Hawk war, the soldier is not entitled. *D. Demoville* (Sec. McClelland), 4 L. B. P., 11.

See also SUBTITLE: BROTHERS AND SISTERS.

23. **Service**—Continued.

(f) **Cherokee removal.**

Troops employed in removing the Cherokee Indians from North Carolina in 1838 are not entitled to the benefits of the act of September 28, 1850, unless called into service for the express purpose of suppressing the hostilities of the Indians, or actually engaged in such duties. *Communication to J. P. Caldwell, H. R. (Sec. Stuart), 2 L. B. P., 23.*

See also SUBTITLES: 1 (c) **TEAMSTERS.**

(g) **Constitution, U. S. S.**

Service on the U. S. S. *Constitution* during the war with Mexico does not entitle to bounty land, as said vessel was not engaged in said war. *Colville Tenett (Sec. McClelland), 4 L. B. P., 264.*

(h) **Creek disturbances.**

Title to bounty land is acquired under the act of September 28, 1850, by service of noncommissioned officers, privates, etc., in the "Creek disturbances" between May 5 and September 30, 1836, such disturbances being construed to constitute a "war" within the meaning of said act. *Communication to H. A. Haralson, H. R. (Sec. Stuart), 2 L. B. P., 46.*

(i) **Dispatch bearer.**

Service as a bearer of dispatches, during the Mexican war, from the vice-consul at Mazatlan and the commodore of the United States squadron in the Pacific to the United States consul at Havana was not military service, and does not, therefore, entitle to bounty land under the act of March 3, 1855, as only those in the strictly military service of the United States and those specifically designated in said act are entitled thereunder. *James Reid (Sec. McClelland), 4 L. B. P., 187.*

(j) **Evidence—**

(1) *When parol is admissible and when not.*

As the evidence shows the name of the one for whom claimant alleges he served as substitute is found on the muster roll, and that he has received bounty land, parol evidence is inadmissible to contradict or vary the rolls, and claim was properly rejected. *Edward Blodgett, alleged substitute of Linus Blakeslee (Sec. Thompson), 4 L. B. P., 431.*

Where the records show a discharge but fail to show the cause thereof the latter fact should be shown by other testimony than the applicant's own affidavit, and if the testimony

23. Service—Continued.**(j) Evidence—Continued.**

of commissioned officers is not obtainable may be shown by testimony of other credible witnesses. *Elijah A. Peyton* (Sec. Ewing), 1 L. B. P., 103.

The records showing that the principal performed the service, parol evidence can not be admitted to contradict the record. *William K. Whitney* (Sec. Thompson), 4 L. B. P., 314.

Bounty land can not be allowed upon parol testimony establishing the service of the individual unless it is shown by record evidence that the company or regiment in which the party claims to have served had an existence. There being no record of "Capt. Paul's" company, Indian war, 1790 and 1792, these claimants can have no title under the acts of March 3, 1855, and May 14, 1856. *Lewis Sir et al.* (Sec. Thompson), 4 L. B. P., 410.

The word "service" in the third sections of the acts of March 3, 1855, and May 14, 1856, refers to that of the soldier, not to that of his company, and there being a record of the company, parol evidence is admissible, under the latter act, as to the fact of the soldier's service therein. *Minor children of Patrick Hays* (Sec. Delano), 8 L. B. P., 156.

The documentary evidence herein, consisting of a purported roll and amended return of the company, taken from the rolls as revised on the first Tuesday of May, 1812, affords no evidence whatever of service of the organization alleged (Captain Hate E. Hall's company of the First Regiment, Second Brigade, Tenth Division, Massachusetts Militia, war of 1812), in that war; and there being no record evidence of the service of the organization, parol evidence can not be accepted as proof that an individual performed service therein. *Widow of Asa Farnsworth* (Sec. Schurz), 5 P. D. (o. s.), 89.

It has been the uniform practice of this Department, for years past, to hold that parol evidence, submitted to prove individual service, can not be considered in cases where no record of the service of the company exists; and no good reason appears for changing the rule now, notwithstanding there are bounty-land cases on file which have been allowed on evidence of the character submitted herein. (A roll made up in 1850, by a justice of the peace from the certificates of individuals as to their service in the invasion of Plattsburg, in Captain Matthias S. Jones's company.) *Mary Brown, as widow of Matthias S. Jones* (Sec. Schurz), 6 P. D. (o. s.), 41.

23. Service—Continued.**(j) Evidence—Continued.****(2) When State records are sufficient.**

Bounty-land warrants for service at Plattsburg are properly allowed on evidence from an original roll of a company, on file in the office of the secretary of state of Vermont, which was authenticated by affidavits of officers and privates who served therein. *Harriet M. Owens* (Sec. Schurz), 5 P. D. (o. s.), 454.

(3) Rebuttal of prima facie title under act of March 9, 1878.

The prima facie title to service pension, under proviso to section 3, act of March 9, 1878, is rebutted by newly discovered evidence giving different name on rolls, and different signature to receipt roll, showing that land warrant was improperly granted. *Widow of John Delaplain* (Sec. Schurz), 6 P. D. (o. s.), 256.

(k) Florida—service in.

Soldiers of the United States Army serving in Florida in 1850 and 1855, are not entitled to bounty land under the act of March 3, 1855, since they were not engaged in a "war." *Communication* (Sec. C. B. Smith), 5 L. B. P., 17.

As the records of the War Department show that this claimant's organization (Fourth United States Heavy Artillery) did not serve in Florida during the period of his enlistment, rejection of claim is affirmed. *Andrew R. Beeman* (Actg. Sec. Bell), 8 P. D., (o. s.), 246.

(l) Indians.**(1) Under act of September 28, 1850.**

Title to bounty land is acquired, under act of September 28, 1850, by Indians who were mustered and performed the duties of soldiers. *Communication to J. S. Phelps, H. R.* (Sec. Stuart), 2 L. B. P., 37.

(2) Contra.

Indians are not entitled to the benefits of the act of September 28, 1850. *Wot-se-kai, heir of Tus-tu-mag-gee Cho-pe-o* (Sec. McClelland), 2 L. B. P., 225.

(m) Indian wars—"Rogue River," "Navajo and Apache," and "Apache."

Service in "Rogue River," "Navajo and Apache," and "Apache" wars entitles to bounty land. *James Dempsey, jr., et al* (Sec. McClelland), 4 L. B. P., 255.

23. **Service**—Continued.(a) **Marine Corps**—at Philadelphia.

The widow of a marine stationed at Philadelphia during the Mexican war is not entitled to pension, as the service of husband was not at seat of war. *Anna M. Gould* (Sec. Schurz), 4 P. D. (o. s.), 490.

(1) *On the coast of Africa.*

A marine whose vessel was in service during the Mexican war on the coast of Africa and in the Mediterranean is not entitled to pension, as such service was not in any war, and there is no provision of law for allowing bounty land for service not in war. *James Murphy* (Actg. Sec. Bell), 7 P. D. (o. s.), 166.

The service of the frigate *United States*, which was attached to the fleet in the Mediterranean during the Mexican war, does not entitle to bounty land, as it was not in said war, although the commodore of said vessel was under orders to cruise for Mexican privateers, as such orders were issued upon the mere rumor that the Mexican Government had forwarded to Europe blank letters of marque and certificates for naturalization for use in fitting out privateers, and there is no evidence that any Mexican privateer was put afloat in those waters. There is no justification for classing such service as in the Mexican war. *George Gardiner* (Sec. Kirkwood), 8 P. D. (o. s.), 412.

(2) *Under the joint resolution of August 10, 1848.*

The "entire portion" of the Marine Corps, whether they served on land or water, are to be regarded within the true meaning of the resolution of August 10, 1848, as having "served with the Army in the war with Mexico" and entitled to the bounty land and other remuneration which that resolution provides. *Atty. Gen. Johnson*, 5 Op., 155.

A Marine Corps serving on land or on board ship on the Mexican Coast in the Mexican war is within the purview of the joint resolution of August 10, 1848, but the seamen are not so included. *Communication to Charles B. Stickney* (Sec. Ewing), 1 L. B. P., 76.

Members of the Marine Corps are entitled under the joint resolution of August 10, 1848, if they relinquish or if having received they make restitution of prize money and other extra allowances, and the receipt of a warrant is of itself a sufficient relinquishment of such money and allowances, though an express relinquishment may properly be required, but a marine

23. Service—Continued.

(n) **Marine Corps—Continued.**

need not prove that he has not received prize money or extra allowances. His own affidavit to that effect is prima facie sufficient, and the burden of proof is thereby thrown upon the Government. *Henry McKevitt* (Sec. Ewing), 1 L. B. P., 200.

(3) *Under the act of September 28, 1850.*

Where any portion of the Marine Corps in the several wars referred to in the act of September 28, 1850, was embodied with the Army in the field, and performed service as a part of the line of the Army, it is entitled to bounty land under said act. *Communication* (Sec. Stuart), 1 L. B. P., 252.

Under the act of September 28, 1850, officers of the Marine Corps are equally entitled with officers of the Army on account of service in the Mexican war; citing opinion of Attorney-General Johnson, September 17, 1849. *Henry B. Tyler* (Sec. Stuart), 2 L. B. P., 147.

(o) **Militia.**

Militia or volunteers serving under the general command of the United States, whether in time of war or not, and whether under the immediate authority of the United States or of a State or Territory, if paid by the United States, are entitled to bounty land under section 1 of the act of March 3, 1855. 7 Op. Atty. Gen., 606. *Communication to George S. Houston, H. R.* (Sec. McClelland), 4 L. B. P., 56.

Vermont militia not entitled to bounty land for services in northern frontier disturbances of 1838–39. *James S. Wilson* (Sec. Schurz), 6 P. D. (o. s.), 385.

A member of the Missouri militia whose services were paid for out of the appropriation made June 9, 1860, is within the classes provided for by the act of March 3, 1855, and is entitled to bounty land, whether such services were in time of war or not, according to the Attorney-General's opinion of December 14, 1855 (q. v.). *Daniel S. Lockridge* (Asst. Sec. Hawkins), 2 P. D., 368.

See SUBTITLE 23 (hh).

(p) **Muster-in.**

Title to bounty land under act of February 11, 1847, is not impaired by the fact that the soldier was not mustered into the service with the rest of his company, the final muster-out roll showing the fact of service and that he was regularly mustered out. *Jesse E. Davis* (Sec. Ewing), 1 L. B. P., 64.

23.—**Service**—Continued.(p) **Muster-in**—Continued.

Title to bounty land is not impaired when the muster into service was prevented by the sickness of the soldier. *James Thompson* (Sec. Ewing), 1 L. B. P., 194.

To obtain title to bounty land, troops called out by proclamation of the President must be mustered into the service of the United States. *Communication* (Sec. Stuart), 2 L. B. P., 36.

(q) **Negroes.**

Title to bounty land and pension is acquired by free negroes enlisted in the public service, under the act of December 24, 1812. *Atty. Gen. Wirt*, 1 Op., 602.

(r) **New Mexico.**

Under the peculiar circumstances of this case, it appearing that claimant volunteered, was subject to military orders, that his expedition to the Navajo country was by permission and under authority of the military governor of New Mexico, that the necessity of such expedition was recognized, and that only the unbroken condition of the horses prevented joining the regular forces, and that such a state of hostilities existed as the Department has heretofore recognized as sufficient to justify allowance for battle service, this claim should be allowed. *José Morales* (Sec. Thompson), 4 L. B. P., 414.

The Department having several years since decided on appeal that New Mexicans were without the provisions of the acts of March 3, 1855, and of May 14, 1856, and that decision having governed the action of the Pension Office until recently, the practice will not, at this late date, be altered. *Instructions* (Actg. Sec. Otto), 5 L. B. P., 153.

The disturbance in New Mexico in 1855 of the Utah, Apache, and Navajo Indians is not regarded as having constituted a state of "war," and those in that service are entitled to bounty land only if engaged in actual battle. *William H. Brown* (Actg. Sec. Gorham), 3 P. D. (o. s.), 486.

(s) **"Northeastern" or "Aroostook" disturbances.**

Those persons engaged in service which was strictly military in its character, and under proper military authority, during the "Northeastern" or "Aroostook" disturbances (Maine), are entitled to bounty land, but those employed in a civil capacity merely are not entitled. *Thomas Bartlett* (Sec. Thompson), 4 L. B. P., 459.

23. Service—Continued.**(t) Oregon post route.**

Service rendered at a point remote from the seat of war, and having no apparent connection therewith, though performed during the time of the war, is not such service as is contemplated in the bounty-land law. The service of this claimant as a teamster of the Oregon battalion, an organization stated to have been raised for the purpose of establishing a line of posts between Fort Leavenworth and Oregon Territory, being almost identical with that in William L. Wilson, March 11, 1878, does not entitle to bounty land. *Samuel T. Miller* (Sec. Schurz), 5 P. D. (o. s.), 442.

See (dd), THIS SUBTITLE.

(u) Patriot war.

Service in the "patriot war," so called, does not give title under existing law. *Communication to J. W. Walkenburg* (Sec. McClelland), 4 L. B. P., 31.

(v) Plattsburg, N. Y.

Those only are entitled to the benefits of section 9 of the act of March 3, 1855, whose companies were called out by competent authority and whose services were paid for by the United States, whether they were actually present at or en route to Plattsburg or not. *Lot E. Dunham et al.* (Sec. Thompson), 4 L. B. P., 337.

See also (j), THIS SUBTITLE.

(w) Revenue cutters.

In order that service on a revenue cutter may give title to bounty land, the President must have, in accordance with proviso of section 98 of the act of March 2, 1799, ordered the cutter to cooperate with the Navy. Adhering to decision of Sec. McClelland (not specified). *Communication* (Sec. Thompson), 4 L. B. P., 411.

(x) Santa Fe traders' guard

Title to bounty land is not acquired, under the act of September 28, 1850, by the persons who volunteered to guard the Santa Fe traders. *Communication to Asst. P. M. G. Warren* (Sec. Stuart), 2 L. B. P., 12.

(y) Seamen.

See (n), THIS SUBTITLE.

(z) Seminole war.

See (k), THIS SUBTITLE.

23. **Service**—Continued.(aa) **Spy.**

The act of March 3, 1855, does not provide bounty land for service as a spy, and as it is not claimed appellant served in any other capacity his claim is inadmissible. *Aaron Hubbell* (Sec. Thompson), 4 L. B. P., 474.

(bb) **State.**

Under sections 4 and 5, act of March 22, 1852, persons engaged in the service of any State, and whose services have been paid for by the United States, since June 18, 1812, have acquired title only for the length of time thus paid for. *Communication* (Sec. McClelland), 3 L. B. P., 102.

(cc) **Substitute.**

Title to bounty land is not impaired by the employment of a substitute, nor by substitute's subsequent desertion, if principal was honorably discharged. *Atty. Gen. Taney*, 2 Op., 470.

The substitute who performed the service is the person entitled to bounty land. *Communication to John D. Imboden* (Sec. Stuart), 1 L. B. P., 252.

The substitute and not the employer is the one entitled to bounty land under the act of September 28, 1850; but when the drafted soldier served a portion of the time for which he was enrolled and then furnished a substitute, both would be entitled for their respective terms of actual service. *Communication to Senator Dodge* (Sec. Stuart), 2 L. B. P., 22.

(dd) **Teamster.**

Teamsters must have served at the seat of war to be entitled under the act of March 3, 1855, and service "en route to Oregon posts," as shown by the records, is not within the statute. *Thomas J. Basye* (Sec. Thompson), 4 L. B. P., 395.

See OREGON POST ROUTE, (t) THIS SUBTITLE.

Wagon masters and teamsters employed in the removal of the Cherokee Indians are not entitled under the act of March 3, 1855, to bounty land, as their services were not rendered in time of war. *James R. Denton, et al.* (Sec. Thompson), 4 L. B. P., 364.

See SUBTITLE 23 (t).

(ee) **"Texan war."**

Service in the "Texan war" does not entitle to bounty land, as the United States was not engaged in that war. *Widow of Patrick Magee* (Sec. McClelland), 4 L. B. P., 81.

See SUBTITLE 23 (a):

23. Service—Continued.

(ff) "Toledo war."

The "Toledo war," so called, does not give title under section 1, act of March 3, 1855, as it was not a war in which the United States was engaged. *Communication to Joseph Wood* (Sec. McClelland), 3 L. B. P., 402.

(gg) Traders' companies under Colonel Doniphan.

Colonel Doniphan's regiment, Missouri Mounted Volunteers, was accompanied, on a march in 1847, from Santa Fe to Chihuahua, Mexico, by a party of traders who, with the persons employed by them, were organized, for the better protection of themselves and the property under their charge, into two companies, which were discharged on reaching the city of Chihuahua, their destination: *Held*, That this claimant, who belonged to one of said companies, was not in the service of the United States in such a sense as to bring his claim within the provisions of the bounty-land laws, his service being more private than public in character, and he being subject to military orders only in a very limited sense. *Jasper N. Davis* (Sec. Delano), 9 P. D. (o. s.), 292.

See THIS SUBTITLE (x); SERVICE, 14 (a).

(hh) Volunteers.

On May 16, 1846, the Secretary of War, under the direction of the President, made a requisition on the governor of Ohio for three regiments of volunteers for the Mexican war, pursuant to which requisition the governor made a call for volunteers, and this claimant responded to the officers appointed by the governor for receiving and mustering into service such volunteers; but before the three regiments were completed, claimant's company was discharged by order of the governor. Thereafter Congress passed a joint resolution authorizing and directing the Secretary of War to pay such volunteers for the time they were detained in the service, and the claimant was paid accordingly for fourteen days' service. Actg. Sec. Crittenden held (2 L. B. P., 122) that claimant was not entitled to bounty land under the act of February 11, 1847, but submitted the case to the Attorney-General for an opinion, on receipt of which opinion the Secretary directed adjudication of the claim, in deference, as stated, to said opinion by the Attorney-General. *Perry Rhinchart* (Sec. Stuart), 2 L. B. P., 125.

Volunteers are understood to embrace only militia organized by State or Territorial authority, and called into the service of the United States in an emergency by the President, and the statute grants bounty land to such whether they served in

23. Service—Continued.**(hh) Volunteers—Continued.**

any war or not; but others, viz, those in the Regular Army or in the Navy, must have served in some war. *G. R. Davis* (Sec. Delano), 2 P. D. (o. s.), 274.

See THIS SUBTITLE (o).

(ii) War Department, service in.

The service which entitles to bounty land under the act of September 28, 1850, is service which is distinctly war, and not merely military service; and the act does not embrace the officers and employees attached to the War Department in Washington, D. C. *Communication* (Sec. Stuart), 2 L. B. P., 51.

(ij) "Winnebago disturbances."

The "Winnebago disturbances" did not constitute a "war" within the meaning of the act of September 28, 1850. *Communication* (Sec. McClelland), 2 L. B. P., 221.

24. Special act granting pension does not include bounty land.

A special act of Congress granting a pension to a party is not to be construed as including allowance of bounty land. *Peter K. Morgan* (Sec. Schurz), 8 P. D. (o. s.), 35.

25. Succession of title.

Where a person entitled to bounty land deceded before he received it, leaving two heirs at law, and a will devising certain other of his real and personal estate to one to be in full of all interest in his estate. *Held*, That the other takes the bounty land by implication. *Atty. Gen. Taney*, 2 Op., 535.

Where the soldier had received bounty-land warrant for 40 acres of land, his heir may, if otherwise entitled, receive warrant for 120 acres additional, only, under the act of March 3, 1855. *Son of Richard Booth* (Asst. Sec. Hawkins), 2 P. D., 299.

The act of June 3, 1858, operated upon all warrants which had been issued after the death of the claimant so as to vest such warrants, in case no widow survived, in the heirs general, in derogation of any exclusive right which the act of March 3, 1855, may have given to the minor child; and where, prior to the passage of said act of 1858, a warrant had been issued subsequent to the death of the claimant, and the minor child did not surrender it for cancellation until subsequent to June 3, 1858, such child's laches deprived it of its exclusive right, and the bounty should go to the heirs at law, according to the statute of distribution in the State where the ancestor was domiciled. *Widow of Jacob Stiles* (Sec. Thompson), 4 L. B. P., 443.

25. Succession of title—Continued.

The legal representatives of a deceased claimant for bounty-land warrant may prosecute, for the benefit of the claimant's heirs or legatees, his claim for such warrant pending on appeal at the time of his death. *Matilda Kerren* (Asst. Sec. Reynolds's), 7 P. D., 443.

Title to bounty land of a soldier dying intestate reverts, after the death of the widow, to the heirs at law of the soldier, and not to those of the widow, except there were none in the paternal line. *Atty. Gen. Taney*, 2 Op., 579.

The word "claimant" as used in section 2444, Revised Statutes, includes the persons embraced within the provisions of sections 2426, 2427, and 2428, Revised Statutes, and on the death of such persons, when proof is filed during their lifetime establishing, to the satisfaction of the Pension Bureau, their right to a land warrant, the title thereto vests in the claimant's widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant. *Margaret E. Ross* (Asst. Sec. Reynolds), 7 P. D., 395.

Title to a bounty-land warrant, granted in the name of the soldier, after his death vests, under section 2418, Revised Statutes, in his surviving widow, whose subsequent sale and assignment, for value received, of her interest in such warrant forecloses all her rights to a bounty-land warrant on account of the services of her deceased husband. *Widow of Samuel Lambert* (Asst. Sec. Bussey), 4 P. D., 36.

26. Widows, remarriage of.

Under act of September 28, 1850, a second marriage deprives a widow of title, unless she was a widow at the dates of the passage of the act and of filing her application, and if she be married or dead the minor children are entitled. *Communication to R. H. Stanton* (Actg. Sec. Graham), 2 L. B. P., 7; also, Sec. Stuart, *ibid*.

Under section 2424, Revised Statutes, a soldier's widow who has remarried and has a husband living has no status as claimant for a bounty-land warrant. *Widow of Samuel Lambert* (Asst. Sec. Bussey), 4 P. D., 36.

(a) Issue of warrant to alleged widow while husband is living.

Issuance of a bounty-land warrant to a widow, under the belief that her husband was dead, can not be regarded as a satisfaction of his claim should it be shown that he is alive. *Henry Gifford* (Actg. Sec. Cowen), 2 P. D. (o. s.), 482.

See also DESERTION; FRAUD AND MISTAKE; MEXICAN WAR; SERVICE.

BROTHERS AND SISTERS.

See BOUNTY LAND; DEPENDENT RELATIVES; HALF-BLOOD.

BURDEN OF PROOF.

See ADULTEROUS COHABITATION; BOUNTY LAND (Service—Generally); EVIDENCE.

CADETS.

See SERVICE.

CALLS.

See ATTORNEYSHIP.

CANCELLATION.

See BOUNTY LAND; CERTIFICATES.

CAPTAIN'S CLERK.

See COMMENCEMENT; SERVICE.

CASUALTY.

See EVIDENCE (Records).

CAVEAT.

See BOUNTY LAND (Duplicate Warrants).

CERTIFICATES.

1. Of examination must specify rate.
2. Of biennial examination is subject to revision by Commissioner.
3. Of disability (for discharge)—definition.
4. Of pension—alteration.

(1) Of examination must specify rate.

A certificate of medical examination executed subsequent to the act of March 2, 1895, which fails to specifically state the rating which, in the judgment of the examining surgeons, the applicant is entitled to, is fatally defective. *Alonzo Roberts* (Asst. Sec. Reynolds), 8 P. D., 83.

The rejection of a claim for invalid pension on a certificate of medical examination which failed to state the rate of pension the board of surgeons believed him entitled to, as required by the act of March 2, 1895, is error. *Charles M. Campbell* (Asst. Sec. Reynolds), 8 P. D., —.

(2) **Of biennial examination—Commissioner may revise.**

A certificate of biennial examination, under section 4771, Revised Statutes, is subject to revision by the Commissioner of Pensions. *Vincent Harrison* (Sec. Schurz), 5 P. D. (o. s.), 253.

(3) **Of disability (for discharge)—definition.**

A certificate of disability is the expert medical official registration of an existing fact required by law to be recorded, made in compliance with law and in the line of duty. Citing par. 245, 246, and 247 United States Army Regulations (1881), pp. 30-31; 1 Greenleaf on Evidence, par. 493. *Henry Halstead* (Asst. Sec. Hawkins), 2 P. D., 221; *Albert T. Chapin*, *ibid.*, 254.

(4) **Of pension—alteration.**

The words "biennial examination not required" having been indorsed by the Pension Office on the pension certificate after such certificate had been signed and sealed by the Department, it was held that such indorsement was wholly unauthorized and the certificate should be canceled and a new one issued. *Ward B. Burnett* (Sec. Cox), 7 L. B. P., 127.

See also (as to certificates of examination) ATTORNEYS; COPIES OF PAPERS; EVIDENCE; EXAMINATIONS; MEDICAL REFEREE; (as to certificate of disability for discharge) COPIES OF PAPERS; EVIDENCE; (as to discharge certificate) DISCHARGE; WITHDRAWAL OF PAPERS; (as to pension certificate) FRAUD AND MISTAKE; RESTORATION; SOLDIER'S HOME; (as to certificate of character, etc.) ATTORNEYS; DECLARATIONS.

"CHAMPION."

See WAR VESSELS.

CHECKS.

See ACCRUED PENSION.

CHEROKEE INDIANS.

See BOUNTY LAND; CONSTRUCTION OF LAWS; INDIANS.

CITIZENSHIP.

1. Loss of, forfeits pension under act of February 14, 1871.
2. Under act of July 27, 1892, must be alleged and proved.

1. Loss of, forfeits pension under act of February 14, 1871.

Loss of citizenship forfeits pension under act of February 14, 1871. *Joshua Webster* (Sec. Delano), 2 P. D. (o. s.), 173.

2. Under act of July 27, 1892, must be alleged and proved.

Under the act of July 27, 1892, claimant must allege and prove his citizenship. *J. B. Courson* (Asst. Sec. Bussey), 6 P. D., 189.

See also ATTORNEYS; DECLARATIONS.

CIVILIAN EMPLOYEES.

See SERVICE.

CLAIMANTS FOR PENSION.

See ACCRUED PENSION; ADULTEROUS COHABITATION.

CLAIMS.

See DECLARATIONS.

CLERKS.**Compensation of, in investigation of fraud.**

No clerk in the Pension Office, detailed for investigation of attempts at fraud, will be allowed the additional compensation provided for by section 4744, Revised Statutes, except during the time actually and necessarily employed by him in the proper discharge of such duty; and no such additional compensation will be allowed to any such clerk employed at the seat of Government for any services rendered within the Pension Office in connection with the investigation or examination of such attempted fraud. *Instructions* (Actg. Sec. Cowen), 3 P. D. (o. s.), 47.

See also (as to captain's clerk) COMMENCEMENT (Special Act); SERVICE.

COAST SURVEY STEAMERS.

See WAR VESSELS.

COHABITATION.

See ADULTEROUS COHABITATION; MARRIAGE; REMARRIAGE.

COLORED PERSONS.

See ATTORNEYS; BOUNTY LAND; DEPENDENT RELATIVES; MARRIAGE; MINORS.

COMMENCEMENT.

1. Ante-rebellion pension.
2. Rebellion and post-rebellion pension.
3. When declaration is defective.
4. When declaration is lost.
5. Pension under act of June 27, 1890, generally.
6. Navy pensions—act of March 2, 1867.
7. Increase—generally.
 - (a) *On account of specific disabilities.*
 - (b) *On account of nonspecific disabilities.*
 - (c) *On account of minors.*
 - (d) *Under act of June 27, 1890.*
8. Under act of March 3, 1891 (Powell's Battalion).
9. Special act pension.
10. New disability pension.
11. Reduction.
12. Dependent father's pension.
13. Widow's pension.
14. Minor's pension.

1. Ante-rebellion pension.

Col. R. M. Johnson's pension is (under the operation of the second section of the act of May 15, 1820, chap. 109) to commence from the time of the certifying of the testimony. Testimony is never complete until it comes fully authenticated. *Atty. Gen. Wirt*, 5 Op., 750.

Under section 4713, Revised Statutes, pension in this case was properly commenced from the date of filing the last paper requisite in establishing the claim, the disability having been incurred in 1846, in service from which claimant was discharged in 1847; and the claim being filed in 1880. *Josiah W. Clark* (Sec. Teller), 9 P. D. (o. s.), 462.

Where pension is allowed on account of a disability originating in service prior to March 4, 1861, it can not commence from date of filing declaration, but, under section 4713, Revised Statutes, must commence, if declaration was filed three or more years after the soldier's discharge, from the date of filing the last paper requisite to establish the claim. *Burton Randolph* (Asst. Sec. Hawkins), 2 P. D., 335.

Where the cause of disability originated in the service prior to March 4, 1861, and claim for pension is not filed within three years from date of discharge, under provisions of section 4713, Revised Statutes, the pension must begin at the date of filing the last evidence necessary to establish the claim. *Isaac S. Warmoth* (Asst. Sec. Bussey), 3 P. D., 324.

1. Ante-rebellion pension—Continued.

The provisions of section 4713, Revised Statutes, do not affect nor relate to any claim for pension that was allowed prior to June 6, 1866, and claim must be adjudicated with reference solely to the law as it existed at the date of its allowance, and, under the pension law in force in 1851, it was provided that all pensions allowed should be made to begin, not from the date of the soldier's discharge but from the date of the completion of the evidence necessary to establish the claim. *Theodore Smith* (Asst. Sec. Bussey), 3 P. D., 379.

The provision in section 4713, Revised Statutes, declaring that where an application for pension should not have been filed "within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing, by the party prosecuting the claim, the last paper requisite to establish the same," is applicable to half-pay pensions allowable under section 4725, Revised Statutes. *Actg. Atty. Gen. Phillips*, 17 Op., 221.

2. Rebellion and post-rebellion pension.

All pensions granted on account of a cause which originated since the 4th of March, 1861, if the application therefor is filed after the 1st of July, 1880, should commence from the date of filing the application. *Susan Hunter* (Sec. Kirkwood), 8 P. D. (o. s.), 476.

See LIMITATIONS.

Claim was filed October 9, 1889, while claimant was in desertion, and therefore had no status to apply. Claimant was finally discharged September 15, 1892; his pension was very properly made to commence at the date of filing a declaration after he was discharged. *Charles T. Garrard* (Asst. Sec. Reynolds), 7 P. D., 548.

3. When declaration is defective.

Where an application for a pension was made by letter, sufficient to identify the claimant and the claim, and was placed on file as a part of the record of the case before July 1, 1880, and the claim was not abandoned, but delay in its prosecution satisfactorily accounted for by sickness: *Advised*, That (the claim being subsequently established and allowed) such application by letter is sufficient to warrant the granting of arrears of pension provided for by section 2 of the act of March 3, 1879. *Atty. Gen. Garland*, 19 Op., 190.

3. When declaration is defective—Continued.

A declaration not executed before some person authorized to administer oaths in pension cases is void and does not authorize a pension subsequently granted on a valid declaration to commence from the date of filing such void declaration. *Hannah J. Patterson* (widow) (Asst. Sec. Reynolds), 7 P. D., 450.

When a claimant made application under the name under which he enlisted, and was subsequently requested by the Bureau of Pensions to file a new declaration correctly stating his name, such second declaration should be treated as amendatory of the first, and pension made to commence from the date of filing the first declaration if the pensionable disability was shown to have then existed. *Mitchell Malcolm, alias Malcolm Mitchell* (Asst. Sec. Reynolds), 7 P. D., 457.

Pension under old law may commence from date of filing an informal declaration when the informality is cured by the subsequent filing of a formal declaration. *Joseph Mallette* (Asst. Sec. Reynolds), 8 P. D., 37.

See also SUBTITLE 5.

4. When declaration is lost.

Where a declaration was filed, given a number, and a medical examination thereunder was had showing the existence, in a pensionable degree, of the disability alleged, and such declaration was lost, a new one called for and furnished, the pension when granted should commence from the date of filing the original declaration. *Alexander Beanstick* (Asst. Sec. Reynolds), 8 P. D., 262.

5. Pension under act of June 27, 1890, generally.

Pension under the act of June 27, 1890, can commence only from date of filing a completed, formal application under said act; and an informal declaration may not be so amended that pension can commence from date it was filed. *Communication* (Asst. Sec. Bussey), 4 P. D., 140.

All pensions granted under the second section of the act, for disabilities which incapacitate for the performance of manual labor in such a degree as to render the claimant unable to earn a support, should commence from the date of filing the application therefor in the Bureau of Pensions, after the passage of said act, upon proof that a pensionable disability existed at the time such application was filed. *Timothy J. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

If certain disabling causes are alleged but not found upon examination, but others, unalleged, are found which, in their

5. Pension under act of June 27, 1890, generally—Continued.

nature, are kindred, pathologically connected with, or easily mistaken for those actually alleged by one unacquainted with pathology, and it is susceptible of proof that these unalleged causes existed when the declaration was filed, upon proof that they created a pensionable condition at the date said declaration was filed, pension may be made to commence from the date of filing the original application, as in claims under the general law.

If certain disabling causes are alleged and, upon examination during the process of adjudication, others, dissimilar and not easily mistaken for those alleged, are found which contribute to an inability to earn a support, the claimant may be notified of his right to file a second declaration to cover these causes (unalleged) found upon examination, and upon proof that these newly alleged causes existed at the date of filing the second declaration, pension may be made to commence under the first declaration at such rate as is warranted by the condition arising from the causes therein specified, and a higher rate (if warranted), to commence from the date of filing the second declaration, upon proof that these newly alleged causes have resulted in an increased inability to earn a support by manual labor. Where, however, certificate has already issued under the first declaration, the increase under the second declaration must commence, as held in the *Carley Case* (7 P. D., 12), "from the date of the surgeon's certificate establishing the increased disability, * * * as provided by section 4698½, Revised Statutes." *Charles J. Bryant* (Asst. Sec. Reynolds), 7 P. D., 299.

See also *James J. Durkee* (Asst. Sec. Reynolds), 8 P. D., 152.

Section 2 of the act of June 27, 1890, provides that pensions granted thereunder shall commence from the date of filing the application therefor, after the passage of the act, upon proof that the disability on account of which the pension is claimed then existed. *George Smith* (Asst. Sec. Reynolds), 7 P. D., 424.

Under the act of June 27, 1890, and March 6, 1896, the making of the date of the filing of the declaration as the date of commencement of a pension is coupled with the necessity of proving that the alleged disability existed at the date of such filing. The date of the filing of a first declaration can not be made the date of the commencement of a pension allowed under a subsequent declaration, when there was no pensionable disability proved to exist at the date of filing the first declaration. *Alexander Eastman* (Asst. Sec. Reynolds), 8 P. D., —.

See also SUBTITLES; DEPENDENT FATHERS; MINORS; WIDOWS.

6. Navy Pensions—act of March 2, 1867.

Where a certificate of the Secretary of the Navy that an applicant for navy pension comes within the purview of section 6 of the act of March 2, 1867, does not fix the date for the commencement of pension, pension should commence from the date of such certificate. *John Brown* (Actg. Sec. Cowen), 1 P. D. (o. s.), 11.

7. Increase—generally.

Increase of an invalid pension should commence at the date of the examining surgeon's certificate, in the absence of any proof of increased disability prior thereto. *J. H. M. Martin* (Sec. Cox), 6 L. B. P., 476.

Where pension has been allowed for a disability, and years after its allowance claim is made for increase on account of the development of disabilities resulting as a sequence to that for which pensioned: *Held*, That the commencement of increase must be governed by section 4698½, Revised Statutes. *Henry B. Livingston* (Sec. Schurz), 7 P. D. (o. s.), 139.

When increased by an order of the Secretary of the Interior or by a ruling of the Commissioner of Pensions, will not be allowed to commence prior to the date of such order or ruling. *Addison P. Shearman* (Sec. Teller), 16 P. D. (o. s.), 164.

A rating for increase on account of a pathological sequence, traceable to a pensionable disability, must begin from the date at which the medical certificate shows the development of the sequence itself in a pensionable degree. *Charles H. Wisner* (Asst. Sec. Bussey), 5 P. D., 8.

(a) On account of specific disabilities.

Increases of pension under the act of March 3, 1885, relating to pension on account of loss of leg at the hip joint, can not commence prior to that date. *Charles A. Nichols* (Asst. Sec. Bussey), 4 P. D., 213.

Disability, gunshot wound of right foot, on account of which the amputation of right leg became necessary December 25, 1886. Pension was allowed at \$4 per month from June 10, 1865; \$12 from May 20, 1886, and \$45 per month from June 2, 1887, date of first medical examination after amputation had been performed, the latter under the provisions of section 4698½, Revised Statutes: *Held*, The application of section 4698½, Revised Statutes, in this claim was erroneous, for the reason it was an adjudication of an original claim with no claim for increase pending. The nonspecific became a permanent specific disability on December 25, 1886. Upon the date it became such the claimant was justly and lawfully entitled to the rate of \$45

7. Increase—Continued.**(a) On account of specific disabilities—Continued.**

per month under the provisions of the act of August 4, 1886, regardless of the date of medical examination. *George W. Keith* (Asst. Sec. Reynolds) 7 P. D., 552.

Claimant was pensioned in October, 1885, at \$30 per month, for gunshot wound of right leg. In September, 1894, the rate was increased to \$36 per month under the second clause of the act of August 4, 1886, commencing January 17, 1894, date of medical examination: *Held*, The date of commencement of said increase was erroneous for the following reasons:

1. The evidence shows that at the date of the passage of the act of August 4, 1886, he had a permanent specific disability, which entitled him to the rate of \$30 per month under said act from that date.

2. The increase of rate to \$36 was by reason of the fact that another permanent specific disability had arisen, caused by the amputation of his leg on January 19, 1893.

3. As the claim was based upon a permanent specific disability, and the higher rate was granted on the ground that another permanent specific disability of a higher degree existed, for which another and higher rate is fixed by law, the right to the higher rate commenced at the date of amputation, and is not governed by the provisions of section 4698½, Revised Statutes.

4. All claims for increase on account of permanent specific disabilities involving an amputation are included in the exception contained in section 4698½ Revised Statutes; therefore, in such cases the increased rate should commence from date of amputation.

5. Claims for increase on account of other specific disabilities which require a medical examination to determine the fact of existence, and date of commencement thereof, are not included in the foregoing rule; therefore, the rate of increase therefor should begin at the date of medical examination under the provisions of section 4698½, Revised Statutes. *John E. Lamb* (Asst. Sec. Reynolds), 8 P. D., 191.

(b) On account of nonspecific disabilities.

Pensioner's disability being permanent but not specific, his claim for increase is governed by section 4698½, Revised Statutes, as to commencement of pension thereunder. *Michael Kelly* (Sec. Delano), 2 P. D. (o. s.), 217.

Increase of pension for a nonspecific disability can not be made to commence prior to the date of the examining surgeons'

7. Increase—Continued.**(b) On account of nonspecific disabilities—Continued.**

certificate establishing the same. *James Harris* (Sec. Teller), 9 P. D. (o. s.), 324.

A pensioner, on account of loss of a hand and a foot, having filed on June 26, 1880, a claim on account of alleged injury to head, it was held said claim was on account of a nonspecific disability, and was therefore a claim for increase, and governed as to commencement of pension thereunder by section 4698½, Revised Statutes, and not by section 2 of the act of March 3, 1879. *Oscar Dunlap* (Asst. Sec. Hawkins), 2 P. D., 291.

The commencement of the increase of pension from \$31.25 to the \$50 rate, where it is not shown that at the date of the passage of the act of June 18, 1874, the claimant was entitled to the benefit thereof, is governed by section 4698½, Revised Statutes, and should be from the date of the examining surgeons' certificate establishing the same made under the pending claim. *Julia M. Jones* (Asst. Sec. Bussey), 3 P. D., 72.

(c) On account of minors.

Where the widow's pension begins from filing the last evidence (which in this case was subsequent to July 25, 1866), additional pension on account of minor children should begin at the same time. *Mary Rich (widow)* (Sec. Cox), 7 L. B. P., 284.

The Department holds that no act of Congress passed subsequent to July 25, 1866, fixes the date of commencement of the increase of widow's pension prior to July 25, 1866, the date of the passage of the act granting such increase. *Frederick M. Dunn* (Sec. Teller), 16 P. D. (o. s.), 25.

Cited in *Peter K. Leichty*, 4 P. D., 321.

Additional pension allowable under the act of July 25, 1866 (section 4703, R. S.), can not commence prior to the date of passage of said act, notwithstanding the acts of January 25 and March 3, 1879, and June 7, 1888. *Widow of George W. Herring* (Asst. Sec. Bussey), 4 P. D., 312.

Cited in *Peter K. Leichty*, 4 P. D., 321.

The \$2 per month additional pension allowable under section 4703, Revised Statutes, can not commence prior to July 25, 1866, the date of the passage of the original act granting such additional pension; and the acts of March 3, 1879 (second section), and June 7, 1888, have no bearing on the question of commencement in such cases. *Widow of Wright Madden* (Asst. Sec. Bussey), 6 P. D., 6.

7. Increase—Continued.

(d) **Under act of June 27, 1890.**

When a pensioner under the act of June 27, 1890, files a claim for increase, the increased pension should commence from the date of the surgeon's certificate establishing the increased disability, made under the pending claim, as provided by section 4698½, Revised Statutes. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

See also PENSIONS UNDER ACT OF JUNE 27, 1890, SUB-TITLE 5.

8. Under act of March 3, 1891 (Powell's Battalion).

Commencement of pension under act of March 3, 1891, as to Powell's Battalion, can not antedate the passage of said act. *William G. Lee* (Asst. Sec. Bussey), 6 P. D., 149.

9. Under special act.

Pension granted by special act to a widow commences only from the date of the passage of such act, in the absence of an express provision therein, and not from the date of her husband's death. *Widow of Francis Taylor* (Sec. Harlan), 6 L. B. P., 50.

Where a special act fixes the date of commencement of pension thereunder, section 6 of the act of July 27, 1868, has no application, as under the settled construction said section merely extends the period prescribed by former laws within which the pension claim should be filed. *Widow of Horace N. Harrison* (Sec. Cox), 6 L. B. P., 529.

Where a special act does not designate the date when pension should commence, it can not be allowed prior to the passage of the act. *Mother of George W. Winans* (Sec. Delano), 8 L. B. P., 387.

Where a special act fixes no date for commencement of pension thereunder, pension should commence from the date of approval of such act and not from discharge of the pensioner. *Joseph B. Rodden* (Actg. Sec. Cowen), 3 P. D. (o. s.), 64.

Where the special act does not fix the date of commencement of pension, it will commence from the date of the act, under section 4720, Revised Statutes. *Peter K. Morgan* (Sec. Schurz), 8 P. D. (o. s.), 35.

As the special act under which this claimant is pensioned provides that his name shall be placed on the pension roll subject to the provisions of the pension laws the same "as though he had been regularly mustered into the United States Army," his service having been as a confidential scout and guide, as stated in said act, section 4720 Revised Statutes, does not apply thereto, and pension thereunder should commence from

9. Under special act—Continued.

the date his military service ceased, which should be determined, if the records fail to show it, by proof furnished by him. *William J. Lee* (Actg. Sec. Joslyn), 15 P. D. (o. s.), 280.

When claimant obtains relief by special act of Congress the payment must begin at the date of passage and approval of the act, unless the act itself specify some other date, and all arrears are cut off. *Alvin Walker* (Asst. Sec. Hawkins), 1 P. D., 143.

When pension is granted by special act and no date of commencement is specified in the act, it should commence from the date of passage of the act, under the law and the decisions of the Department. Citing section 4720, Revised Statutes, and acts of June 6, 1874, and July 25, 1882; also *Alvin Walker*, 1 P. D., 143; *Edwin E. Tucker*, *ibid.*, 1; *James Long*, *ibid.*, 423; *James H. Young*, *ib.*, 445. *Widow of John E. Allen* (Asst. Sec. Hawkins), 2 P. D., 262.

The case of a widow's pension granted by special act is not affected by the provisions of the act approved June 7, 1888. *Ibid.*

Claimant, a captain's clerk, having been dropped from the rolls on the ground that he was not an officer or enlisted man within the meaning of the act of January 29, 1887, under which he was pensioned, was restored to the roll by a special act which provided restoration should take effect from and after passage of said special act: *Held*, Dropping from the rolls was erroneous under *Richard H. Sinton* decision, 2 P. D., 320, and had pensioner not applied to Congress for relief he would be entitled to restoration from the date at which payment of pension had been suspended; but having sought Congressional instead of departmental (by appeal) relief, he must abide by the enactment providing that pension shall be restored only from date of passage of special act. *Lachlan L. McIntosh* (Asst. Sec. Hawkins), 2 P. D., 366.

As the special act under which this claimant is pensioned does not fix the date of commencement of the pension, it can commence only from the date of passage of the act, under section 4720, Revised Statutes. *George Ziefle* (Asst. Sec. Bussey), 4 P. D., 14.

Commencement of pension under a special act which makes no provision as to commencement must be from date of passage of such act; but if a claim under the general law be proved, pension thereunder may be allowed upon surrender of certificate issued pursuant to such act. Citing *Ollie M. French*, 3 P. D., 94; *T. Miller Raub*, *ibid.*, 206. *Thomas Stroder* (Asst. Sec. Bussey), 4 P. D., 242.

9. Under special act—Continued.

The acts of January 25 and March 3, 1879, have no application to commencement of pension under a special act, passed in 1873, which provided pension thereunder should commence from the date of its passage. Adhering to former decisions herein, 8 P. D. (o. s.), 288, 483. *Robert H. Brown* (Asst. Sec. Bussey), 4 P. D., 305.

10. On account of a new disability.

A claim on account of a new disability (alleged to have existed at the time the original claim was filed), filed subsequent to the five-year limitation period, within which the original claim was filed, can not be brought under the original claim so as to secure arrears of pension. *Louis Soistman* (Actg. Sec. Cowen), 8 L. B. P., 238.

When an application for invalid pension was filed prior to July 1, 1880, and a supplemental one on account of another or a new disability was filed subsequent to that date, the pension, if allowed on account of the new disability, must commence from the date of filing the declaration therefor. *John Current* (Sec. Kirkwood), 8 P. D. (o. s.), 497.

11. Reduction.

Where a reduction of pension is deemed proper on account of decrease of disability it is the practice not to commence the reduced rate prior to the date of the certificate of a surgeon or board of surgeons showing such decrease. *William B. Walton* (Asst. Sec. Reynolds), 8 P. D., 19.

12. Dependent father's pension.

Pension to father commences from date of death of mother. The acts of January 25 and March 3, 1879, do not authorize the payment to the father of any portion of the pension to which the mother would have been entitled had she survived. *William McMillan* (Sec. Schurz), 6 P. D. (o. s.), 172.

All pensions granted to dependent parents under the first section of the act of June 27, 1890, should commence from the date of filing the application under said act. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

13. Widow's pension.

The pension of the widow of a deceased soldier or officer does not take effect from the date of his discharge, but from the date of his death. This is the settled construction of the laws. *Instructions* (Sec. Cox), 6 L. B. P., 512.

13. Widow's pension—Continued.

The commencement of widow's pension whose claim was filed subsequent to July 1, 1880, is limited to the date of filing the declaration therefor. *Mary J. Leffingwell* (Asst. Sec. Hawkins), 1 P. D., 280; *Mary E. Coder, as widow of Frank Kelly* (Actg. Sec. Muldrow), *ibid.*, 205.

Pensions granted to widows or minor children under the third section of the act of June 27, 1890, should commence from the date of the application therefor, after the passage of the act and after the death of the soldier; and in case of a minor, after the death or remarriage of the widow. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

14. Minor's pension—act of June 27, 1890.

Where an application is filed under the act of June 27, 1890, in behalf of a minor child, by one assuming to act as guardian, upon appointment as such by a court of competent jurisdiction, and such appointment is not completed in accordance with the existing local law, or for other reasons is invalid, and another person becomes the duly qualified guardian and files a like application, the pension, when allowed, shall commence from the date of filing the first application. *Minors of Henry Sander* (Asst. Sec. Reynolds), 7 P. D., 324.

A minor's pension under the act of June 27, 1890, granted by reason of the remarriage of widow, should commence from date of filing of the minor's application. (Case of *Timothy L. Carley*, 7 P. D., 12.) *Minor of Ernst Rieckhoff* (Asst. Sec. Reynolds), 8 P. D., 324.

Pensions granted to minor children of soldiers under the provisions of section 3, act of June 27, 1890, commence from the date of filing the application therefor in the Bureau of Pensions after the passage of said act, the death of the soldier, and the death or remarriage of the widow of the soldier. (Carley's appeal, 7 P. D., 12.) *Mary E. Bromoel, minor* (Asst. Sec. Reynolds), 8 P. D., —.

Under act of June 27, 1890, all pensions commence from date of filing claim. Minors deriving their original title from death of the parent, and secondary or dependent title from death or remarriage of the widow, are bound by the same rule, and can receive pension under this act only from date of filing claim therefor. *Minor of George W. Good* (Asst. Sec. Reynolds), 8 P. D., —.

See also ARREARS; CONSTRUCTION OF LAWS; DECLARATIONS; GUARDIANS; INCREASE; INDIAN WARS; LIMITATION; MEXICAN WAR; PRACTICE; REDUCTION; RESTORATION; SPECIAL ACT; WAR OF 1812; WAR OF THE REBELLION.

COMMISSARY.

See REVOLUTIONARY WAR.

COMMISSION.

See COURTS; EVIDENCE; RANK; SERVICE.

COMMISSIONER OF PENSIONS.

See ABANDONMENT; BOUNTY LAND; CONSTRUCTION OF LAWS; EXAMINATIONS; FEES; JURISDICTION; MANDAMUS; PRACTICE; RES ADJUDICATA.

COMMUTATION.

See AMPUTATION; ARTIFICIAL LIMB; BOUNTY LAND; HALF PAY; REIMBURSEMENT.

CONSCRIPTION.

See DISLOYALTY.

"CONSTITUTION," U. S. S.

See BOUNTY LAND (Service).

CONSTRUCTION OF LAWS.

1. Duties of the head of a Department.
2. The proviso of an act.
3. Conflicting provisions of the Revised Statutes.
4. Repeals.
5. Pension laws, generally.
 - (a) *Act of April 14, 1842.*
 - (b) *Act of March 3, 1865.*
 - (c) *Act of March 3, 1873 (section 6)—Legislative construction.*
 - (d) *Act of June 27, 1890.*
 - (e) *Section 4703, Revised Statutes.*
 - (f) *Act of July 1, 1890, and joint resolution of September 1, 1890.*

1. Duties of the head of a Department.

Whenever a general act is passed embracing a defined class of cases and assigning to a head of Department the executive duty of ascertaining the particular cases of the class, and applying the law to them, the terms of the law constitute a rule for his government, as he is to execute it according to its provisions, as conscientiously construed by him. Applied in case of Griffith, 9 P. D. (o. s.), 180. *Atty. Gen. Cushing*, 6 Op., 684.

2. The proviso of an act.

The proviso of an enactment should be construed as part and parcel of such enactment, and not separately. The provisos of section 4 of the act of March 3, 1873, are governed,

2. The proviso of an act—Continued.

therefore, by the opening language of the section, and take effect from and after June 4, 1872, allowing arrears from that date. *Roger Bellis* (Sec. Delano), 1 P. D. (o. s.), 262.

3. Conflicting provisions of the Revised Statutes.

There being a conflict between sections 4713, Revised Statutes (containing the provisions of the nineteenth section of the act of March 3, 1873), and 4725, Revised Statutes (which contains the provisions of section 1 of the act of June 3, 1858), it is proper to refer to the laws existing previous to the enactment of the Revised Statutes, and on doing so in this case, it is held, no sufficient reason appears for setting aside the long-established practice, approved by the Department, of commencing renewal of pension, originally allowed under acts granting five years' half pay, from the date of filing the last paper in the case, where the declaration for renewal was not filed until after three years from the expiration of the prior pension, as held in *Agnes Wheeler*, Sec. Cox, February 19, 1870. *Savilla Athey* (Sec. Kirkwood), 8 P. D. (o. s.), 373.

4. Repeals.

Courts have long manifested a disinclination to favor implied repeals, and never suffer the doctrine to prevail beyond the necessary implication, except in cases where there has been a general revision or the laws upon a particular subject have been embodied and reduced to a system, and only when there is a positive inconsistency in the substance of the law, as when two provisions are repugnant, will the former law be considered as overruled, to the extent only, however, of the inconsistency. *Atty. Gen. Clifford*, 4 Op., 582.

A repealed statute has no bearing on a case adjudicated subsequent to the repeal, but the laws existing at the date of adjudication should govern. *Jeremiah B. Wilbut* (Sec. Cox), 6 L. B. P., 484.

5. Pension laws, generally.

It is not within the province of the accounting officers of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions. This properly belongs to the Commissioner of Pensions, whose duty it is, under the direction of the Secretary of the Interior, to administer these laws. *Atty. Gen. Brewster*, 17 Op., 339.

The Department holds that "the pension laws should be construed in the liberal and generous spirit which prompted their enactment, and where doubts can not be resolved by evidence, presumption should incline toward the claimant." *Peter N. F. Von Otterndorf* (Asst. Sec. Bussey), 3 P. D., 341.

5. Pension laws, generally—Continued.

(a) Act of April 14, 1842.

The act of April 14, 1842, must be construed by reference to the treaty with the Cherokees; and all the benefits of said treaty, of which this act is the fruit and fulfillment, descend on the personal representatives of a Cherokee, allowing them to receive, under said act, the amount to which he would have been entitled had he survived the passing of the act. *Atty. Gen. Legare*, 4 Op., 55.

(b) Act of March 3, 1865.

Section 1 of the act of March 3, 1865, operated both upon pensions granted prior to its passage and upon those granted subsequent thereto and prior to June 6, 1866, when said section was repealed. Citing *A. H. Dibble*, 8 L. B. P., 213. *F. W. Vaughn* (Sec. Delano), 2 P. D. (o. s.), 330.

(c) Act of March 3, 1873 (section 6)—Legislative construction.

When the words of a statute which were of uncertain signification originally, but which have been construed by the proper authority, are repeated in a subsequent statute, that is understood to mean not a repetition merely of the words, with the received construction, but an implied legislative adoption of such construction. Section 6 of the act of March 3, 1873, repeating section 8 of the act of June 6, 1866, and adopting the provision in favor of enlisted men absent on veteran furlough, and with the organization to which they belonged, is an affirmation of the construction of said act of 1866 in the case of *John W. Liddick*, Secretary Browning, March 25, 1867, to the effect that, while the general rule is that a person absent on furlough for any other purpose than on sick leave or sick furlough should not be pensionable, an exception exists where a soldier incurs disability while on veteran furlough with his organization prior to the date of his individual furlough. *Thomas Griffith* (Sec. Kirkwood), 9 P. D. (o. s.), 180.

See also *DEATH*.

(d) Act of June 27, 1890.

The first section of the act of June 27, 1890, chapter 634, entitled "An act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor," etc., is to be regarded as an amendment of section 4707, Revised Statutes; and so regarded, the word "soldier" employed therein should be construed to comprehend also sailor and marine, the term being used as a short expression to embrace all the persons under section 4707 whose death entitled their parents to a pension. *Solicitor-General Taft*, 19 Op., 586.

5. Pension laws, generally—Continued.**(d) Act of June 27, 1890—Continued.**

A claim under the act of June 27, 1890, is separate and distinct from a claim under the general laws. *Communication; H. S. Kellogg, attorney* (Asst. Sec. Bussey), 4 P. D., 171.

The act of June 27, 1890, is a part of the pension code and is to be construed with existing pension laws in *pari materia*; so construed, it operates cumulatively and not by way of substitution or repeal. Overruling *Daniel B. Garrison*, 6 P. D., 289; *George W. Coffey*, 4 P. D., 285; *Richard Martin*, 6 P. D., 107; *Collins and Gilliland*, *ibid*, 257. *Adolph Bernstein* (Asst. Sec. Reynolds), 7 P. D., 229.

The act of June 27, 1890, is a part of the pension code, and is to be construed with existing laws in *pari materia*, and is subject to the inhibitory provision of section 4716, Revised Statutes. *Sarah H. Osborn* (Asst. Sec. Reynolds), 7 P. D., 317.

The act of June 27, 1890, is a part of the pension code, and is to be construed with existing pension laws in *pari materia*. *Adolph Bernstein*, 7 P. D., 229, cited and followed. *Ellen J. Pipes* (widow) (Asst. Sec. Reynolds), 7 P. D., 489.

(e) Section 4703, Revised Statutes.

Section 4703, Revised Statutes, applies to the act of June 27, 1890, and the \$2 per month for each child of deceased soldier by a former wife will be paid the widow where the stepchildren are being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldiers' orphans.

The second proviso of said section is in the nature of an exception to the first proviso and applies equally to the mother and stepmother of the children of the deceased soldier. *Bell Gilbert* (Asst. Sec. Reynolds), 7 P. D., 239.

(f) Act of July 1, 1890, and joint resolution of September 1, 1890.

The joint resolution of September 1, 1890, construing the act of July 1, 1890, does not operate to make said act retroactive, but that resolution is retroactive, but is limited in its effect to the period between its date and the date of the act of July 1, 1890. *In re H. S. Berlin, attorney* (Asst. Sec. Bussey), 5 P. D., 129.

See also (As to construed words and phrases); ACCRUED PENSION; ADULTEROUS COHABITATION; AMPUTATION ("elbow;" "knee"); DISABILITIES ("equivalent;" "total"); ENLISTMENT; GUNBOATS; LEGAL DISABILITIES; MINORS ("permanently helpless"); NAVY PENSION; PENSION; POST; RANK ("officer"), and other titles generally.

CONTINUANCE.

See DEPENDENCE; DISABILITY; EVIDENCE.

CONTRACT.

See BOUNTY LAND; FEE CONTRACT.

CONTRACT SURGEONS.

See SERVICE.

CONTRIBUTIONS.

See DEPENDENT RELATIVES.

CONTRIBUTORY NEGLIGENCE.

Culpable negligence or carelessness on the part of a soldier, which results in a disability disqualifying him for military duty, is a bar to the allowance of pension on account of such disability. *Mother of Walter O'Donald* (Sec. Delano), 8 L. B. P., 432.

Every invalid pensioner, however disabled, is bound as a prudent man to use every proper means at his command to alleviate his sufferings and lessen his disability, and his failure to do so would make him responsible for the aggravation of his disability. *Louis Rynd* (Sec. Schurz), 7 P. D. (o. s.), 277.

A person who is totally deaf is guilty of gross negligence in walking on a railroad track when not compelled to do so. He should exercise that due care and caution which ordinary prudence would dictate should be exercised by one in a crippled condition or not in the normal enjoyment of all his faculties. *Thomas S. Bennett* (Asst. Sec. Hawkins), 2 P. D., 9.

Above three decisions cited and followed in *Widow of Clark J. Castalor* (Asst. Sec. Hawkins), 2 P. D., 32.

Soldier, while walking along a railroad track, was run over by a "wild train" coming up behind him, which he, being totally deaf, did not hear. He lived near the railroad, was employed near by, and his duties kept him where trains were passing. The nearest way from his work to his home and the customary road of travel for people was over a portion of the track. He started home at a time when no schedule train was due.

He was careful about exposing himself to danger from trains: *Held*, He was prevented by his pensioned deafness from avoiding an unforeseen danger, and was not contributorily negligent, and his widow is pensionable. *Widow of James M. Downing* (Asst. Sec. Bussey), 4 P. D., 222.

Claimant's husband was pensioned for gunshot wound of leg. While he was sitting on a porch at his home he attempted to rise, and in so doing fell, receiving injuries from which he soon thereafter died. Immediately after the fall he was carried into his house, when, in response to inquiries, he declared that his leg gave way, causing him to fall: *Held*, That he was not guilty of contributory negligence, and his death was due to his wounded leg. *Rebecca Maness, now Harris* (Asst. Sec. Reynolds), 7 P. D., 110.

Where a soldier, pensioned on account of deafness, walks alongside of a railroad track for the purpose of making a "short cut" from his home to another part of the city and is struck by a car and injured, the injury is primarily due to his own negligence, and only secondarily and remotely, if at all, to his deafness. To establish a claim for increase of pension on account of injuries alleged to have been incurred by reason of the disability for which pensioned it must be clearly and satisfactorily shown that the accident resulting in such injuries was directly occasioned by the preexisting disability and was in nowise due to negligence or carelessness on the part of the claimant, or to the lack of that care and caution which ordinary prudence would dictate should be exercised by one in a crippled condition or not in the normal enjoyment of all his faculties. *James M. Downing*, 4 P. D., 222, modified. *Frederick W. Kerner* (Asst. Sec. Reynolds), 7 P. D., 305.

Disability or death from a contributory or secondary cause, which could have been avoided by the exercise of ordinary care and discretion, does not confer the right to pension. *Diana B. Groff* (Asst. Sec. Reynolds), 8 P. D., 91.

A person disabled by deafness, impaired vision, and an injury which interferes with locomotion, who adopts a railroad track as a highway of travel at night, is grossly negligent in so doing, and if killed by a passing train while pursuing such course of travel his widow is not pensionable under the general law. Citing cases of *Bennett* and *Castalor* (2 P. D., 9 and 32). *Lucy Adams* (Asst. Sec. Reynolds) 8 P. D., 93.

See also DEATH CAUSE; DISABILITY; LINE OF DUTY; SEQUENCE; VICIOUS HABITS.

COPIES OF PAPERS.

1. Copies of evidence—when furnished.
2. Abstracts to attorneys—what evidence to be excluded.
3. Copies of certificates of examination, not furnished.
4. Copies of appellate decisions—when furnished.

1. Copies of evidence, when furnished.

The regulation that copies of evidence will not be furnished except upon application for the same by the tribunal or Department wherein such evidence is to be used is a proper one, but may be waived in exceptional cases. *Children of Martin F. Louce* (Sec. Delano) 1 P. D. (o. s.), 30.

2. Abstracts to attorneys—what evidence to be excluded.

Abstracts furnished to attorneys should exclude record, medical, and other evidence of a confidential nature. *Isaac Miller* (Sec. Delano), 2 P. D. (o. s.), 169.

3. Copies of certificates of examination, not furnished.

Attorneys should not be furnished with copies of certificates of examining surgeons, as such certificates are not evidence, but are merely advisory opinions for the consideration of the Commissioner. *Lewis J. Jones* (Sec. Delano), 2 P. D. (o. s.), 170.

Copies of certificates of examination will not be furnished attorneys. *John Cluck* (Sec. Schurz), 4 P. D. (o. s.), 230.

Attorneys can not be furnished with copies of certificates of disability. This is the uniform practice of the office. *James Patten* (Sec. Schurz), 7 P. D. (o. s.), 136.

4. Copies of appellate decisions, when furnished.

A copy of the decision in an appealed claim will hereafter be furnished by the Pension Office to the attorney or the appellant when such decision is affirmative, but not when it is adverse or does not enter into the merits of the case. *Instructions* (Sec. Delano), 8 L. B. P., 486.

The purport of affirmative decisions may be furnished the claimant or his attorney when such decisions are lengthy or contain matters not intended to be made public, but the entire decisions may be given in other cases, except in reversals. *Minors of Moses Petty* (Actg. Sec. Cowen), 2 P. D. (o. s.), 438.

See also ATTORNEYS; BOUNTY LAND (Attorneys).

CORPORATIONS.

See ACCRUED PENSION (Reimbursement).

COURTS.**1. Of record, what are.**

(a) *What characterizes a court of record.*

2. Court-martial distinguished from military commission.**3. Court of inquiry distinguished from military commission.****4. Court of Claims.****5. As to judgments.****1. Of record, what are.**

Courts of record are those, first, which are expressly made courts of record by the laws of the State which create them; second, which have been solemnly adjudged by the tribunals of the several States to be courts of record; third, which proceed according to the course of the common law, with a jurisdiction unlimited in point of amount, keeping a record of their proceedings; fourth, which have the power of fine and imprisonment. And those courts which proceed according to the course of the civil and canon law, having neither of above attributes, are not courts of record, although they may keep a registry of their proceedings and possess a seal. *Atty. Gen. Wirt*, 1 Op., 356.

(a. *What characterizes a court of record.*

The power to fine and imprison is not in this country a distinguishing mark of a court of record, but the enrolling or recording of their acts and proceedings is; and such court must have a seal by which its acts and proceedings are authenticated and proved. *Atty. Gen. Brewster*, 17 Op., 510.

2. Court-martial distinguished from military commission.

Only a court-martial has jurisdiction over military offenses; while a military commission is limited in jurisdiction to civil offenses. *Mother of Ferdinand D. Chollar* (Asst. Sec. Bussey), 4 P. D., 103.

3. Court of inquiry distinguished from military commission.

A court of inquiry is not a military commission, and its jurisdiction is limited to ascertaining and reporting certain facts, without expressing any opinion as to the merits of the case, unless expressly ordered to do so; but a military commission has power to try and sentence for offenses, provided the offense is subject to trial and punishment by civil courts outside the theater of war, and in time of peace, and was committed within the theater of war, or where martial law was enforced. *Mother of Ferdinand D. Chollar* (Asst. Sec. Bussey), 4 P. D., 103.

4. Court of Claims.

See JURISDICTION.

5. As to judgments.

See EVIDENCE.

CREEK DISTURBANCES.

See BOUNTY LAND (Service).

DEAFNESS.

See DISABILITY; RATING.

DEATH.

1. Presumption of, should govern in pension cases.
2. Can not be presumed in widow's claim.
3. When it will not be presumed.
4. Must be established beyond a reasonable doubt.
5. When sufficiently proved, under act of March 13, 1896.
6. Act of March 13, 1896, construction of.
7. Presumption of, under laws of Kentucky.
8. Presumption of, under laws of Missouri.
9. Illustrative cases where death was not presumed.
10. Illustrative cases where death was presumed.

1. Presumption of, should govern in pension cases.

The presumption of death arising from the absence of a party in parts unknown for seven years, fixed by common law, should govern in decisions of the Commissioner of Pensions. *Instructions* (Sec. Ewing), 1 L. B. P., 142.

2. Can not be presumed in widow's claim.

Death of soldier can not be presumed, but must be proven, in a widow's claim. *Waty Grant* (Sec. C. B. Smith), 5 L. B. P., 22.

3. When it will not be presumed.

Death will not be presumed even though a party is shown to have been absent and unheard of for seven years by those, if any, who if he had been alive would naturally have heard of him, if the circumstances of the case are such as to account for his not being heard of without assuming his death. *Widow of Joseph Schwindlin* (Asst. Sec. Bussey), 6 P. D., 200.

Every fact and incident in this case favoring the presumption of life, except the soldier's prolonged absence, which, in view of his expressed intention not to return, is not a material factor in the case, it is held that his death can not be presumed. *Melinda L. Crider* (Asst. Sec. Reynolds), 7 P. D., 462.

4. Must be established beyond a reasonable doubt.

Where in pension claims the rule as to presumption of death is invoked, it must be shown that the facts attending the absence establish the death of the party beyond a reasonable doubt and independent of absence for any period of time. *Melinda L. Crider, alleged widow* (Asst. Sec. Reynolds), 7 P. D., 462.

See decision following.

The point of the Crider decision was that it is not the mere fact of absence out of which death is to be presumed, whether the time be long or short; but that the facts attending such absence must be such that the absence of the party can not be accounted for on any other theory than that of death. It was intended to give, and did give, express recognition to the rule laid down by the Supreme Court of the United States in the case of *Davie v. Briggs* (97 U. S., 628); and it was, by the express language of that decision, declared to be the purpose of the Department to liberalize that rule and permit the presumption of death to be raised and established even short of seven years, where the facts attending the disappearance are such as to justify the conclusion that the absent party is dead. *Marie Sharpe* (Asst. Sec. Reynolds), 8 P. D., 175.

5. When sufficiently proved, under act of March 13, 1896.

Where satisfactory evidence has been produced establishing the fact of the continued and unexplained absence of a soldier from his home and family for a period of more than seven years, during which period no intelligence of his existence has been received, his death is sufficiently proved under the provisions of the act of Congress approved March 13, 1896. *Marie Sharpe, widow* (Asst. Sec. Reynolds), 8 P. D., 175.

6. Act of March 13, 1896, construction of.

The act of March 13, 1896, is a legislative restatement of the rule laid down by the Supreme Court of the United States in the case of *Davie v. Briggs* (97 U. S., 628), which will be employed by the Department in interpreting and executing said act. *Marie Sharpe, widow* (Asst. Sec. Reynolds), 8 P. D., 175.

7. Presumption of, under laws of Kentucky.

Under the laws of Kentucky a party must be shown to have been absent from the State for seven successive years in order that his death may be presumed; but the presumption arising under the statute is overcome if the party be shown to be living. *Widow of Zachariah Davis* (Asst. Sec. Bussey), 4 P. D., 380.

8. Presumption of, under laws of Missouri.

Claimant's first husband, who lived with her in the State of Missouri at the time of his enlistment, deserted the service August 21, 1864, and was never heard of thereafter; she married the soldier on account of whose death she claims pension, July 25, 1874: *Held*, That under the laws of Missouri her first husband was presumed to be dead at the expiration of his seven years' absence unheard of, and that her second marriage was valid. *Helen Obermeyer (widow)* (Asst. Sec. Reynolds), 7 P. D., 67.

9. Illustrative cases where death was not presumed.

Claimant lived with the sailor about one year after their marriage, when he disappeared. They appear to have had some domestic troubles, and he said he thought he would go to see his mother, living in Sweden; nothing was heard of him thereafter: *Held*, The evidence shows the sailor abandoned claimant, and although he has been absent unheard of for more than seven years his death can not be presumed, and the fact that the Treasury Department has granted claimant prize money as his widow can not control this Department in allowing pension. *Rosie, as widow of Henry Wilson* (Asst. Sec. Bussey), 6 P. D., 133.

Claimant's husband, the soldier, not advanced in years, being an intemperate man, disposed to wander about the country, and who had embezzled money from his employer, and had quarreled with his wife, left her, and his whereabouts thereafter were never known to her: *Held*, That these facts were sufficient to account for his absence without being heard of, and his death would not be presumed. *Mary A. Warburton* (Asst. Sec. Reynolds), 7 P. D., 49.

The sailor, after his marriage to claimant in 1871, lived with her only one month; roaming from place to place, and being a pensioner he was transferred from agency to agency, drawing his pension in 1875 in a distant State, since which time he has not been heard of: *Held*, That these facts do not raise a presumption of death. *Mary J. Miller* (Asst. Sec. Reynolds), 7 P. D., 109.

Where a husband deserted his wife and from the date of his discharge from the United States service in the late war up to 1879 lived and cohabited with another woman as his wife, his death will not be presumed from the fact that he has been absent for seven years unheard of, but his death must be proved by satisfactory evidence before the alleged widow can occupy a pensionable status. *Pythia Ann Sullivan* (Asst. Sec. Reynolds), 7 P. D., 512.

10. Illustrative cases where death was presumed.

It being shown that this soldier was, when last heard from, suffering from a disease liable to prove fatal, and was so disabled by it as to be sent to the general hospital in service, since which time nothing further has been heard from him, no discharge being shown, it is *held* his death from that disability should be presumed, under the rule announced in *Beverly Dangerfield*, October 24, 1882. *Mother of William Waters* (Sec. Teller), 13 P. D. (o. s.), 221.

Although the soldier abandoned claimant, his wife, and she would not, therefore, naturally have heard of him thereafter if he were alive, yet, as no reason appears for his failing to return or to communicate with his other relatives, as diligent search for him has been made, and as he would now be, if living, 75 years of age, and has never applied for pension, it is *held* his death should be presumed under all the circumstances shown. *Widow of James Sickles* (Asst. Sec. Bussey), 6 P. D., 164.

Between 1875 and 1880 the soldier left his wife to seek work; he wrote several letters to her, but has not been seen or heard of since the latter date. He was given to drink, and was somewhat reckless in disposition. Witnesses testify to reading newspaper accounts of his being killed by the Indians: *Held*, That under the facts shown, his death should be presumed. *Widow of Samuel Fulmer* (Asst. Sec. Bussey), 6 P. D., 172.

See also (as to presumption of death) MARRIAGE; (as to death in service) DISCHARGE; (generally) APPEAL; ATTORNEYS; BOUNTY LAND; RERATING; REVOLUTIONARY WAR.

DEATH CAUSE.

1. Ante-rebellion pension.
2. Rebellion and post-rebellion pension.
(a) *Act of June 27, 1890.*
3. Remote connection with service.
4. Death by drowning.
5. Suicide.
6. Death in service.
7. Combined pensionable and nonpensionable causes.
8. Predisposing and superinducing causes.
9. Evidence and proof.
10. Medical referee's opinion, function and force of.
11. Intemperance, effect of.
12. Illustrative cases as to sequence and evidence.

1. **Ante-rebellion pension.**

The widow of a commandant in the Navy who died subsequent to March 4, 1861, of a cause originating prior to that date, is pensionable under the act of August 11, 1848, and not under the act of July 14, 1862. *Widow of Robert R. Cunningham* (Sec. Delano), 1 P. D. (o. s.), 475.

Under section 4732, Revised Statutes, the widow of a soldier who died from a cause originating during the period in which the Government was preparing to compel the Florida Indians to comply with an alleged treaty for their removal, and prior to the first battle in the Florida war, is not pensionable, as there is no provision of law for pensioning the widow of one who died of disease contracted in time of peace. *Widow of Urban Stoll* (Actg. Sec. Gorham), 3 P. D. (o. s.), 466.

The widow of a soldier who died of disease contracted in the military service prior to March 4, 1861, is not entitled to pension on account of such death unless the fatal disease originated in some war. (Digest of 1885, p. 343, par. 3.) *Lydia Fraber, formerly Owen* (Asst. Sec. Reynolds), 8 P. D., 212.

2. **Rebellion and post-rebellion pension.**

The cause of death must be not only a possible, but probable, result of the disability for which pensioned. *Percilla Davis* (Asst. Sec. Hawkins), 1 P. D., 104.

To entitle a widow to pension, her husband's death must have been the natural, direct, or proximate result of wounds or injuries received or contracted while in the service. Citing *Sarah A. Stack*, 2 P. D., 153. (See SUICIDE, SUBTITLE 5.) *Widow of Stedman B. Farrar* (Asst. Sec. Hawkins), 2 P. D., 199.

To entitle a widow to pension, her husband's death must have been the natural, probable, and proximate result of the disability contracted in the service and line of duty. Citing *Percilla Davis*, 1 P. D., 104; *Sarah A. Stack*, 2 P. D., 153. *Widow of Francis O. Miller* (Asst. Sec. Hawkins), 2 P. D., 214.

The relation of cause and effect must exist in the sense that the cause, i. e., wound, injury, or disease received or contracted in the service, must be the thing or condition without which the result, i. e., death, would not have occurred. *Ibid.*

Where service was rendered under the third paragraph of section 4693, Revised Statutes, soldier's death from wounds or injuries received therein is essential to confer pensionable status upon his widow. *Mary E. Davis* (Asst. Sec. Reynolds), 7 P. D., 56.

2. Rebellion and post-rebellion pension—Continued.

Cause of death must be the result of wound, injury, or disease contracted in the service to entitle widow to a pension under section 4702, Revised Statutes. *Mary Larne* (Asst. Sec. Reynolds), 7 P. D., 60.

(a) Act of June 27, 1890.

The act of June 27, 1890, in no manner obviates the necessity of proving the cause of death to be the result of military service to entitle widow to the benefits of section 4702, Revised Statutes. *Ibid.*

3. Remote connection with service.

To sustain a widow's claim, her husband's fatal malady, where his death occurred after his discharge, must be shown to have directly resulted from a wound received or disease incurred in his service, and such wound or disease must be fully proved to be the efficient, though remote, cause of death; and the fact that the general rigors and hardships of an active military life may have so affected the soldier's constitution as to make him likely to fall a victim to disease does not bring the claim within the law. *Widow of Merrill Meader* (Sec. Harlan), 5 L. B. P., 265.

Where the soldier's death was from pneumonia, brought on by a cold contracted in consequence of obeying an urgent call of nature, due to chronic diarrhea of service origin, the widow is pensionable. *Widow of Hamilton E. Ellis* (Sec. Teller), 12 P. D. (o. s.), 390.

Death from a falling tree, in consequence of blindness of service origin rendering him unable to get out of the way, may be accepted as due to the service. *Widow of Jesse F. Pyle* (Sec. Teller), 14 P. D. (o. s.), 151.

Overruled: see decision following.

Casualties occurring as the indirect result of military service can not be accepted as the proper basis for pension. *Mary J. Pyle* overruled. (14 P. D. (o. s.), 151.) *Elizabeth T. Pyle* (Asst. Sec. Hawkins), 1 P. D., 27.

It being admitted soldier's death was due immediately to injuries from an accidental fall occurring many years after discharge, it is held death is too remote from his pensioned disability from rheumatism, there being no evidence that said disability was the sole cause of the accident or to what extent it contributed thereto. Citing and affirming *Henry Mensing*, 1 P. D., 336. *Widow of William Fairfield* (Asst. Sec. Hawkins), 2 P. D., 158.

3. Remote connection with service—Continued.

A soldier died from erysipelas of the head and face which supervened from injury of the head received subsequent to service; it is held the sequence, if any existed, between the death cause and wound of foot, received in service, was so remote in this case it can not be accepted. *Widow of William M. Bishop* (Asst. Sec. Bussey), 4 P. D., 354.

4. Death by drowning.

Claimant, a sufferer from disease of heart, was found dead in the water where he went to bathe. It is held that as no post-mortem examination was made, it can not be established that death was due to heart trouble. *Clara M. Owens* (Asst. Sec. Hawkins), 1 P. D., 420.

Death by drowning can not be ascribed to loss of one arm, for which the soldier was pensioned, which may or may not have prevented him from swimming to shore, he having been, prior to the loss of his arm, an expert swimmer. *Widow of Charles E. Maybury* (Asst. Sec. Hawkins), 1 P. D., 437.

While claimant's husband was attempting, with a companion, to cross a river in a small duck boat a heavy wind capsized the boat and he was drowned while trying to swim ashore. *Held*, Death can not be ascribed, for pensionable purposes, to disability from gunshot wound and debility alleged as of service origin. *Widow of Charles Farnsworth* (Asst. Sec. Bussey), 4 P. D., 203.

5. Suicide.

Expert medical testimony establishing the fact that soldier's suicidal death was by reason of insanity produced by injuries for which pensioned, his widow is pensionable. *Mary A. Buker* (Asst. Sec. Hawkins), 1 P. D., 108.

Where the soldier's death was caused by an overdose of morphine administered by himself upon his own responsibility, but with no suicidal intent: *Held*, No basis for widow's claim. *Alice E. Travers* (Asst. Sec. Hawkins), 1 P. D., 110.

Death must be shown to have been the natural, direct, or proximate result of disease contracted in the service; and where death resulted from an overdose of laudanum, taken through mistake or carelessness, the death cause is too remote from the soldier's pensionable cause of diarrhea to be accepted. Citing and affirming *Alice E. Travers*, 1 P. D., 110; and citing, also, *Mary Buker*, *ibid.* 108. *Mother of John G. Stack* (Asst. Sec. Hawkins), 2 P. D., 153.

5. Suicide—Continued.

Where a soldier had received a gunshot wound in the service and line of duty, and by reason of said wound severe pain and sickness resulted, continuing to increase to such an extent that the soldier became, at times, insane, and in pursuance of a medical prescription he took for relief a fatal dose of laudanum, it is held to be a proper case for pension. There was no suicidal intent, and the immediate cause of death was a part of the treatment for the disability for which soldier was pensioned. *Tamezen Ball* (Asst. Sec. Bussey), 3 P. D., 183.

The evidence of the existence and of the increase of mental disease being conclusive, and the resulting condition being reasonably traced to the privations of prolonged imprisonment, the fact of the soldier's suicide, without other provoking or adequate cause, is held to be due to the mental disability alleged to have originated in the service. The act of suicide is strong if not conclusive evidence of mental disease. The widow of the soldier whose death was caused by suicide is entitled to pension. *Almira J. Morton, widow* (Asst. Sec. Bussey), 3 P. D., 353.

There appearing satisfactory evidence showing that the soldier's suicidal death was due to insanity resulting from disease contracted in the service and line of duty, the Department holds the soldier's widow entitled to pension. *Maggie Schureigert* (Asst. Sec. Bussey), 5 P. D., 32.

Soldier's death (after discharge) from poisoning in consequence of a mistake made by the physician who was treating him for a disease claimed to have been contracted in the service, or by the druggist in putting up the medicine, can not be accepted as being so directly connected with his military service as to warrant the allowance of pension to his widow under section 4702, Revised Statutes. *Ellen Flynn, widow* (Asst. Sec. Reynolds), 8 P. D., 54.

Death resulting from the morphine habit, though contracted by using the drug to relieve pain caused by a malady contracted in the service and in line of duty, not on the advice of a physician but on soldier's own responsibility, can not be accepted as due to the service in the line of duty. *Jessie M. Whallan, widow* (Asst. Sec. Reynolds), 8 P. D., 131.

6. Death in service.

A soldier being found in a building occupied by his command, dead, with a gunshot wound in his left breast, a record was made that his death was due to suicide. The evidence

6. Death in service—Continued.

shows he had been a sound man at and subsequent to enlistment, but had been in bad health just prior to death, and was then sick in bed; was a quiet, sensitive man whom the company teased and plagued almost to desperation, so that he became melancholy and despondent; no cause for insanity or suicide outside of service is shown: *Held*, Death should be presumed to have been in line of duty. *Mother of Gamble McClellan* (Asst. Sec. Bussey), 4 P. D., 117.

Where it is shown that a soldier was sound at enlistment and died in regimental hospital of disease, the exact character and nature of which disease is not shown, the testimony relative thereto being conflicting, it will be presumed, in the absence of evidence to the contrary, that he died of disease contracted in the service and line of duty. *Lydia Young, widow* (Asst. Sec. Reynolds), 8 P. D., 98.

See also EVIDENCE; LINE OF DUTY.

7. Combined pensionable and nonpensionable causes.

This claimant's husband was pensioned for left hernia. At the time of his death he had also a right hernia, which was not shown to have been of service origin. He died from paralysis, which is claimed to have been due to the pensioned disability, but which the medical referee holds was not due to any cause of service origin. It is held that widow's claim was not proven. *Widow of John J. Paterson* (Sec. Chandler), 3 P. D. (o. s.), 392.

Where the soldier was discharged for phthisis pulmonalis, and died from said disease in connection with hepatitis, parol evidence is accepted showing that since discharge no organic disease existed, and that, beyond a reasonable doubt, the habits of the soldier were sufficient cause for aggravating, if not inciting, the cause of the disability from which he died. *William Flowers* (Sec. Schurz), 6 P. D. (o. s.), 196.

Where soldier was pensioned for wound which, it is claimed, affected his liver, although it is uncertain whether his death resulted from bronchitis and hepatitis, or from one of these alone, from the facts presented, the presumption is that there was a connection between the death cause and the wound, and the claimant should have the benefit of the doubt. *Widow of Thomas De la Hunt* (Sec. Schurz), 7 P. D. (o. s.), 89.

Where the evidence, lay and medical, goes to show that the cause for which pension was granted to a soldier was complicated with a disease which was the immediate cause of his

7. Combined pensionable and nonpensionable causes—Cont'd.

death, the Department will sustain the widow's claim for pension on account of the soldier's death from said complication of causes, holding the same, for pensionable purposes, to be due to the line of duty in the service. *Mary A. Cox* (Asst. Sec. Bussey), 3 P. D., 313.

The medical and lay testimony showing death was more probably due to the pensioned than to any other cause, claim of widow is allowed. *Widow of Archibald Snider* (Asst. Sec. Bussey), 4 P. D., 2; *Widow of Charles C. Wright* (Asst. Sec. Reynolds), 8 P. D., —.

The true rule would seem to be that the case should hinge upon the predominating cause of death, *provided* the question as to what was the predominating cause is *susceptible of proof*; but if several causes combine to produce death, only a part of which are due to service and none to fault of the soldier, and from the obscure character and effect of the diseases the extent to which each contributed toward producing death can not be determined, the question should be: Would the disability not due to the service have probably produced death independently of the disability of army origin? If not, the claimant should be given the benefit of the doubt. *Widow of Ernst Bierbaum* (Asst. Sec. Bussey), 4 P. D., 172.

To entitle a widow to pension under section 4702, Revised Statutes, it must appear from the evidence, among other things, that the efficient cause of death, whatever other cause may have been contributory thereto, was of service origin, or directly and clearly connected with and traceable to some cause of service origin. (*Henrietta Petersdorf*, 4 P. D., 96; *Harriet C. Farnsworth*, *ibid.*, 203; *Harriet S. Bishop*, *ibid.*, 34, and *Elizabeth Edgell*, 5 P. D., 96.) *Emma E. Johnson, widow* (Asst. Sec. Reynolds), 7 P. D., 415.

Soldier, during his fatal illness, suffered from disease of heart, result of rheumatism, for which he was pensioned, and also from disease of lungs, which is not conclusively shown to be due to the service, though the evidence strongly tends to establish the same. Both disease of lungs and disease of heart were factors in causing death, but it can not be determined with any degree of certainty which of the two diseases was the predominating cause, or contributed most toward producing death; and it is held that, from the evidence, it is more reasonable to assume that death was due to soldier's military service than to assume that it was not, and the doubts in the case will be resolved in favor of claimant. *Alma Neidhammer* (Asst. Sec. Reynolds), 8 P. D., 276.

8. Predisposing and superinducing causes.

Where it appears that claimant's system was more susceptible, because of chronic affection, not known to be of service origin, to the disease from which it is proved he died, it is no bar to the widow's right to pension, when the fact is made to appear that the soldier died of disease contracted in the service and in line of duty. *Widow of John Featherson* (Sec. C. B. Smith), 5 L. B. P., 33.

Claim for pension based upon the ground that the acute attack of pneumonia from which the soldier died would not have been fatal had his constitution not been broken down by previously existing disease, i. e., diarrhea, is not susceptible of such proof as would justify the allowance of widow's claim; in fact, it is too remote and uncertain. *Widow of James Hoy* (Sec. Schurz), 2 P. D. (o. s.), 210.

Where soldier died of pneumonia ingrafted on a previously existing incurable disease of lungs, caused by his army service, his death is accepted as due to the service. *Eliza W. Cloudman* (Sec. Schurz), 5 P. D. (o. s.), 45.

Pneumonia, in order to be pensionable as a result of disease of lungs, must be so ingrafted upon the previously existing disability as to show that death was the result of or occasioned by the latter disease. Citing *Eliza Cloudman*, 5 P. D. (o. s.), 47; *Elizabeth Hoy*, 4 P. D. (o. s.), 210; *Jane E. Hallett*, *ibid.*, 225. *Widow of Stedman B. Farrar* (Asst. Sec. Hawkins), 2 P. D., 199.

Predisposition is frequently the consequence, no less than the cause, of disease. It is not necessary to show a direct pathological connection between the disease from which the soldier died and that for which he was pensioned. *Josiah T. Tuttle* (Asst. Sec. Bussey), 3 P. D., 52.

A direct pathological sequence between death cause and a service injury or disease need not always be shown. Where a pensionable disability produces such a condition of the system that exposure to certain conditions or elements brings on an attack of a different disease, which would not follow in a healthy subject under like conditions, and while it would, perhaps, be difficult in any given case—and certainly impossible where the cause and history of the disease in question is not fully known to the medical profession—to prove this fact, still, in an ordinary case, if all the facts and conditions susceptible of proof were shown, the question would be determined to a reasonable certainty; or where a new and independent disease combines with one of army origin so as to produce immediate death, which would not otherwise have occurred, and thus

8. Predisposing and superinducing causes—Continued.

becomes the immediate cause of death, and yet, as to its effects upon the vital organs, is only a minor factor in producing death, it would be manifestly unjust to reject a claim for pension based on death, such new disability not being due to the gross fault of the soldier, but coming in the ordinary course of life. *Widow of Ernst Bierbaum* (Asst. Sec. Bussey), 4 P. D., 172.

The evidence showing that the soldier was sound at enlistment, contracted lung trouble while in the service and line of duty, suffered from said disease continuously thereafter, and died from pneumonia, this case comes within the decision in *Eliza W. Clondman*, and claim is allowed. *Catherine G. Smith* (Asst. Sec. Reynolds), 8 P. D., —.

9. Evidence and proof.

Where the preponderance of evidence points to suffocation from coal gas as cause of death, there being no record of heart disease nor of other disability which would cause death, it is held that soldier did not die by reason of disability or disease contracted in service. *Julia Hickey* (Asst. Sec. Hawkins), 1 P. D., 308.

A pension can not be granted upon *presumption and conjecture* alone; and where the cause of death might have been due as well to other circumstances as to a pensionable disability previously incurred in the service, it must be shown by satisfactory evidence to have been directly produced by said pensionable disability. *Widow of Charles E. Maybury* (Asst. Sec. Hawkins), 1 P. D., 437.

Although the War Department canceled the record therein showing the soldier died from delirium tremens, where the testimony adduced on special examination shows that was the more probable cause of death, it will be so accepted. *Widow of Henry Hennick* (Asst. Sec. Hawkins), 2 P. D., 49.

No connection between the soldier's injury of service origin and his death cause being satisfactorily shown, rejection of his widow's claim is affirmed. *Widow of Stephen Compton* (Asst. Sec. Hawkins), 2 P. D., 129.

The question as to whether the cause of death was the remote or the immediate and proximate result of the "wound, injury, or disease" is governed by the rule alike applicable to accidental injuries in the service. Citing *James Harding*, 2 P. D., 232, and cases where questions of pathological sequence are involved; *Mary Farrar*, ib., 199; *Sarah A. Stack*, ib., 153. *Widow of Francis O. Miller* (Asst. Sec. Hawkins), 2 P. D., 214.

9. Evidence and proof—Continued.

Where a pathological relation between the death cause and the pensioned disability is alleged as the basis of claim, the claimant is not required to establish such relation by absolute proof, but there must appear some tangible, direct evidence on which to base at least a reasonable presumption that the pensioned disability actually produced the disease causing death. *Widow of Job Foster* (Asst. Sec. Bussey), 3 P. D., 35.

The diagnosis made and the opinion expressed by the surgeons who attended and treated the soldier in his last illness are accepted in preference to the theory of the medical referee as conclusive evidence showing the cause of the soldier's death. *Widow of Charles F. Brown* (Asst. Sec. Bussey), 3 P. D., 92.

See also SUBTITLE 12.

10. Medical referee's opinion, function and force of.

Where soldier, who was pensioned for gunshot wound of right shoulder, dies of blood poisoning, heart disease, and dropsy, which the medical referee says were not sequelæ of said wound, his opinion will be allowed to govern. *Mary O. Hall* (Asst. Sec. Hawkins), 1 P. D., 180.

This case is decided on the opinion of the medical referee, who holds that soldier's death from gangrene was more probably due to injuries inflicted by a vicious bull just prior to death, than to gunshot wound, contusion of right hip or right gluteal region, received twenty years before. *Ruth C. Adney* (Asst. Sec. Hawkins), 1 P. D., 416.

The Department accepts the opinion of the medical referee holding that soldier's death was caused by disease of heart and asthma, which were not pathological sequences of hernia for which pensioned, as the question is a pathological one. *Mary E. Clifford* (Asst. Sec. Hawkins), 1 P. D., 447.

Whether the death cause of a soldier is properly ascribable to his pensioned disabilities is a purely medical question, in the determination of which the opinion of the medical referee is accepted as generally conclusive when based on the results of medical examinations. Citing *Lucinda Gaskell*, 1 P. D., 29; *Patrick Preston*, ib., 41; *John Douglass*, ib., 52; *William H. Garrison*, ib., 262; *Joseph F. Faulkner*, ib., 292; *Uriah W. Romine*, ib., 299. *Widow of Daniel L. Sprong* (Asst. Sec. Hawkins), 2 P. D., 107.

The Department has universally held that on all questions purely of pathological sequence, as of cause of death, the opinion of the medical referee will govern, in the absence of evidence showing mistake or error on his part. *Widow of George F. Spilman* (Asst. Sec. Hawkins), 2 P. D., 133.

10. Medical referee's opinion, function and force of—Cont'd.

The cause of death presents a purely medical question, in deciding which question it is the settled practice of the Department to be guided by the opinion of the medical referee. Citing Lucinda Gaskell, 1 P. D., 29; Patrick Preston, ib., 41; John Douglass, ib., 52; William H. Garrison, ib., 262; Joseph F. Faulkner, ib., 292; Uriah W. Romine, ib., 299; Levi Reeves, 2 P. D., 177. *Widow of John L. Wright* (Asst. Sec. Hawkins), 2 P. D., 253.

The opinion of the medical referee, based upon all the evidence in the case, will be held conclusive as to the pathological relation of the soldier's death cause and his military service. Citing Joseph F. Faulkner, 1 P. D., 292. *Minors of Julius F. Mabe* (Asst. Sec. Hawkins), 2 P. D., 381.

11. Intemperance, effect of

Death of soldier of disease contracted in service, and aggravated by the habitual use of intoxicating liquors, does not entitle the widow to the benefits of the general pension law. *Abby A. Johnson* (Sec. Delano), 2 P. D. (o. s.), 462.

12. Illustrative cases as to sequence and evidence.

Soldier was pensioned on account of wound of left lung, and died from pneumonia, or, as stated by physician, "inflammation of the right lung:" *Held*, That there was no relation between the death cause and the wound, and that rejection of minor's claim was proper. *John W. Ratliff* (Sec. Schurz), 6 P. D. (o. s.), 198.

Where soldier was pensioned for disability resulting from wound of left thigh and died from cholera, as shown by the record of the health office, the widow's application, based upon the ground that the weakness resulting from the wound caused death, is not sustained, and is not susceptible of such proof as would warrant allowance of her claim. *Widow of John Matz* (Sec. Schurz), 6 P. D. (o. s.), 349.

Where soldier made application for pension on account of derangement of the stomach and diarrhea, and died before its allowance from pneumonia, it is held that the fatal disease from which the soldier died is not shown to have originated in the service. *Mary M. Wright* (Sec. Schurz), 6 P. D. (o. s.), 405.

Where claim of widow for pension is based upon the ground that the soldier died of disease of brain resulting from gunshot wound of foot, the point being one of pathological sequence, and there appearing from the facts presented no element for an intelligent opinion on account of the improbability of the proposition, rejection was proper. *Widow of Gottlieb C. Schafer* (Sec. Schurz), 6 P. D. (o. s.), 430.

12. Illustrative cases as to sequence and evidence—Continued.

Where soldier was pensioned on account of amputation of leg above the ankle, and subsequently died of apoplexy, and widow's application was based upon the ground that the fatal disease resulted from amputation, which was supported by the opinion of the attending physician: *Held*, That the connection is not susceptible of such proof as would warrant allowance of claim. *Widow of John H. Smith* (Sec. Schurz), 7 P. D. (o. s.), 247.

Soldier was employed, subsequent to service, as a fireman on a tugboat. When last seen, he was sitting on the boat in a position where a slight movement would have caused him to lose his balance and fall overboard: *Held*, Death can not be attributed to epilepsy, alleged as of service origin. *Widow of George W. Lewis* (Asst. Sec. Hawkins), 2 P. D., 334.

See also LINE OF DUTY; MEDICAL REFEREE; ORIGIN; RETIRED OFFICERS; SEQUENCE.

DECLARATIONS.

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9. Under act of July 27, 1892.
10. Under special act.
11. Lost declarations.

1. Application and declaration compared.

The words "application" and "declaration," where they occur without qualification in the statutes, mean one and the same thing. An application for pension is a declaration setting forth the grounds upon which pension is claimed. *Charles C. Wilson* (Asst. Sec. Bussey), 3 P. D., 128.

2. When declaration is filed after declarant's death.

A declaration executed prior but not filed until subsequent to the claimant's death can not be considered a claim pending at the date of his death, under the opinion of the Attorney-General in *Mary E. Lord*, October 13, 1879. *Widow of Talbot Dale* (Sec. Kirkwood), 8 P. D. (o. s.), 152.

See also COMMENCEMENT.

3. Execution of—unverified papers.

Under the holding of the Attorney-General of May 10, 1882, that under section 4718, Revised Statutes, a declaration is sufficient to exempt a claim from the limitation of the act of March 3, 1879, if taken before any officer duly authorized to administer oaths for general purposes, a mere letter, unverified, is not sufficient to entitle to arrears under said act a claimant who filed no formal application until subsequent to July 1, 1880. *Pardon B. Lamoreux* (Sec. Teller), 9 P. D. (o. s.), 355.

An application in the form of a letter is not a sufficient declaration, under section 4714, Revised Statutes, to exempt a claim from the limitation fixed by the act of March 3, 1879. *George C. Smith* (Asst. Sec. Hawkins), 1 P. D., 69.

An unsworn application for rerating or reissue should not be submitted for adjudication as a valid claim. *Widow of Rowland M. Jones* (Asst. Sec. Hawkins), 1 P. D., 162.

A declaration must be made under oath before some officer authorized to administer oaths for that purpose. A paper not sworn to is not a legal declaration, and hence not an application. *Charles C. Wilson* (Asst. Sec. Bussey), 3 P. D., 128.

The necessity of the claimant's signature to a declaration is based upon sound practice, and absence of the signature makes such declaration informal. *R. C. Carden* (Asst. Sec. Reynolds), 8 P. D., 330.

(a) Requisites in execution, generally.

Declarations of pension claimants must be made before a court of record or before some officer thereof having custody of its seal. *Atty. Gen. Brewster*, 17 Op., 510.

Declarations for original pensions must be executed as prescribed by section 4714, Revised Statutes, and the return of original papers for correction is prohibited. *John Brown* (Actg. Sec. Bell), 4 P. D. (o. s.), 178.

3. Execution of—Continued.**(a) Requisites in execution, generally—Continued.**

The proviso of section 4714, Revised Statutes, has now no effect whatever, the section to which it referred (4709, Revised Statutes) having been repealed, and does not confer the right to accept a declaration, made before an officer duly authorized to administer oaths for general purposes, to exempt a claim from limitation as to date of filing prescribed by the act of March 3, 1879, but the office is precluded from recognizing as valid under said act any declaration not taken before a court of record or some officer thereof having custody of its seal. *Amos Burton* (Sec. Kirkwood), 8 P. D. (o. s.), 494.

The opinion of the Attorney-General dated May 10, 1882, taking the ground that the proviso of section 4714, Revised Statutes, relating to execution of declarations, has the same effect with respect to the second section of the act of March 3, 1879, that it had with respect to section 4709, Revised Statutes, has been adopted by this Department. *s. c.* (Sec. Teller), 9 P. D. (o. s.), 239.

There is no authority for accepting as sufficient to entitle the applicant to arrears under the act of March 3, 1879, a declaration not executed before an officer authorized to administer oaths for general purposes. *Richard P. Herman* (Sec. Teller), 13 P. D. (o. s.), 258.

A declaration not executed before some person authorized to administer oaths in pension cases is void, and does not authorize a pension subsequently granted on a valid declaration to commence from the date of filing such void declaration. *Hannah J. Patterson, widow* (Asst. Sec. Reynolds), 7 P. D., 450.

See COMMENCEMENT.

(b) Execution of before certain officers.

A declaration, filed in 1869, executed before a notary public not designated by the Commissioner of Pensions to execute declarations, nor residing 25 miles from a court of record, is invalid, and on the death of the applicant before filing a valid declaration gives his widow no title to accrued pension. *James Horton* (Sec. Schurz), 7 P. D. (o. s.), 51.

The office of recorder of deeds in Pennsylvania, which was created by act of assembly May 28, 1715, is not a court of record within the meaning of section 4714, Revised Statutes, and a declaration executed before such recorder of deeds is invalid under said section. *Henry Kenster; Elias B. Lynn* (Sec. Kirkwood), 9 P. D. (o. s.), 35.

Under a declaration for invalid pension executed before an officer authorized to administer oaths for general purposes, a

3. Execution of—Continued.**(b) Execution of before certain officers—Continued.**

claimant's widow is not entitled to accrued pension under section 4718, Revised Statutes, and the fact a certificate as to the official character and signature of the notary public before whom a declaration was executed is attached thereto does not cure the defect, as the law requires that a declaration shall be taken before a court of record or some officer thereof having custody of its seal; adhering to decision of October 25, 1880. *Widow of Arthur Gillman* (Sec. Teller), 9 P. D. (o. s.), 310.

See *Widow of Willis Beardsley*, SUBTITLE (d).

A declaration executed before a commissioner of the superior court for Fairfield County, Conn., is not a valid declaration under section 4714, Revised Statutes, as that officer was not an officer of a court of record. *Widow of William H. Wales* (Sec. Teller), 9 P. D. (o. s.), 336.

See *Widow of Willis Beardsley*, SUBTITLE (d).

A declaration executed in 1882 before a master in chancery of a court is invalid under section 4714, Revised Statutes, and the claimant having died prior to July 1, 1890, said declaration does not come within the purview of the act of that date, which is prospective only in its operation. *Martha Worcester* (Asst. Sec. Bussey), 4 P. D., 127.

(c) Execution of before claimant's attorney.

Declarations or proof executed before the claimant's attorney are inadmissible. *Instructions* (Sec. C. B. Smith), 5 L. B. P., 89.

(d) Amendments in execution.

Where the soldier's application is informal because not executed before a court of record as required by section 4714, Revised Statutes, and he dies before such defect is cured, his widow has the same right which he had, under said section, to complete the declaration, and on doing so she may receive the pension due thereunder. Overruling *Margaret Gillman*, 9 P. D. (o. s.), 310, and *Sarah Wales* (now *Sherwood*), *ibid.*, 336. *Widow of Willis Beardsley* (Sec. Teller), 10 P. D. (o. s.), 293.

Appellant's first application being defective by reason of the omission of the seal of the notary before whom it purported to have been executed, she was required to file a second and properly executed application, and pension was commenced at date of such filing. *Held*, That as there was nothing to indicate fraud, and the defect did not go to the merits of the case and was due to an oversight, the Bureau of Pensions should allow the defect to be cured either by permitting the seal to be

3. Execution of—Continued.

(d) Amendments in execution—Continued.

impressed thereon or the official character and genuine signature of the notary to be shown by certificate of county clerk; and that thereupon the claim should be readjudicated to allow pension from date of filing the first application. *Harriet E. Hanchett* (Asst. Sec. Reynolds), 7 P. D., 325.

A declaration executed before an officer not shown to be authorized to administer oaths for general purposes will be considered informal, and not curable in the manner specified. *Joseph Mallette* (Asst. Sec. Reynolds), 8 P. D., 37.

(e) Identifying witnesses.

The absence of identifying witnesses to a declaration for pension does not invalidate such declaration. *Adolphus A. Graves* (Asst. Sec. Reynolds), 8 P. D., 108.

4. Sufficiency of, generally.

Alleged disease of lungs; discharged therefor; proof showed disease of heart. *Held*, That declaration was sufficient for any disease of heart due to the service. *Theodore Teucher* (Sec. Schurz), 4 P. D. (o. s.), 482.

It appearing that "in affidavit of the claimant made before an officer of a court of record on the 3d of November, 1879, and on the 3d of March, 1880, sufficient facts were stated to constitute a valid claim" for pension on account of disability, adjudication is directed. *Jacob R. Dawson* (Sec. Kirkwood), 9 P. D. (o. s.), 186.

A declaration alleging disease of liver and bowels as result of typhoid fever is sufficient to cover chronic diarrhea, and it is immaterial whether the latter disease was a result of the alleged typhoid fever or not. *Archibald A. M. J. B. Skaggs* (Sec. Teller), 14 P. D. (o. s.), 339.

Pension claimants will not be held to strict technical descriptions of their disabilities. *Robert Crawford* (Asst. Sec. Hawkins), 1 P. D., 153.

A declaration setting forth a particular disease or an injury as the basis of a claim for pension is sufficient to cover all the pathological sequences of such disease or injury. *Charles H. Wisner* (Asst. Sec. Bussey), 5 P. D., 8.

A declaration for invalid pension under the general law which alleges a general breaking down of claimant's system from starvation and exposure while a prisoner of war, and that he had suffered from rheumatism and stomach trouble for eighteen years, is a sufficient declaration for pension on account

4. Sufficiency of, generally—Continued.

of the diseases named, and the claim is therefore reopened for adjudication on its merits. *Andrew Watts* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Widow's claim under the general law.

A declaration for widow's pension under the general law which does not allege that soldier's death resulted from disease contracted or wound received in the service is bad. *Amanda Gittens* (Asst. Sec. Hawkins), 1 P. D., 54.

5. Amendatory and supplementary declarations.

An affidavit in the nature of an explanation or an amendment, called for by the Pension Office to supply a manifest omission or correct an evident error of statement, should relate to the declaration then pending and be considered a part thereof, unless it entirely changes the character of the claim originally made. *Albert G. Hurst* (Actg. Sec. Joslyn), 14 P. D. (o. s.), 472.

A paper filed and purporting to be amendatory to claimant's declaration must be germane to the averments of the declaration as originally made. It must not set forth an entirely different disability from that which was at first alleged as the basis of claimant's application for pension. The amendment must be consistent with the original declaration, or it will be treated by the Department as a new and separate declaration. *Henry Frick* (Asst. Sec. Hawkins), 1 P. D., 274; *Joseph C. Mold* *ibid.*, 353.

Where the original declaration for pension is filed prior to June 30, 1880, and a sworn affidavit, amendatory or explanatory of said declaration, is subsequently filed, the affidavit will be construed as a part of the original declaration, and therefore not subject to the limitation contained in the arrears of pension act, approved March 3, 1879. *William Whitaker* (Asst. Sec. Bussey), 3 P. D., 68.

If an original declaration is broad and general enough in its terms to include the cause of disability on account of which pension is granted, and the subsequent declaration merely sets forth more specifically and definitely the several causes of disability on account of which pension is claimed, and which are germane to the cause originally alleged, and no new and independent basis for pension is set up, or the character of the claim changed, the latter declaration would be amendatory only, and pension should commence under the law governing the original declaration. Citing and following *William Whitaker*, 3 P. D., 68. *Albert Ordway* (Asst. Sec. Bussey), 4 P. D., 90.

5. Amendatory and supplementary declarations—Continued.

The Department reaffirms the ruling made July 28, 1884, in the case of *Albert G. Hurst*, and holds that an affidavit in the nature of an application or of an amendment, called for by the Bureau of Pensions in any pending claim to supply a manifest omission or to correct an evident error of statement, shall relate to the original declaration and be considered a part thereof. *Anthony W. Deffenbaugh* (Asst. Sec. Bussey), 5 P. D., 246.

Where an explanatory or amendatory affidavit is filed which is shown to be germane to an original declaration and a proper explanation of mistakes or discrepancies therein, it will be accepted as a part of the original declaration excepting the claim from the limitation as to arrears prescribed in the act of March 3, 1879. *Oliver P. Pierce* (Asst. Sec. Reynolds), 7 P. D., 91.

Affidavits filed in response to calls of the Pension Bureau for information in a claim under the act of June 27, 1890, can not be accepted as supplemental declarations in a claim under the general law setting up and alleging new and additional causes of disability. *Benjamin Hoskins* (Asst. Sec. Reynolds), 8 P. D., —.

See also COMMENCEMENT.

Since the filing of a supplemental declaration is a condition precedent to allowance for a disability not alleged in first declaration, but found on medical examination, the failure to file such supplemental declaration is fatal to the claim. *Simon P. Eaves* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Illustrative cases as to amendments.

Where, evidently through ignorance as to the nature of his disease, and for want of medical information, the claimant for pension failed to correctly describe his disability in his original declaration, filed within the period of limitation, and the true nature thereof was not discovered until the medical examination subsequent to the period of limitation, when a new application was made correctly describing it, it is held pension should commence from the date of filing the first declaration. *Samuel E. Coombs* (Actg. Sec. Smith), 1 P. D. (o. s.), 179.

A declaration alleging wound of head over left eye will not be accepted as amendatory or explanatory of a previously filed declaration alleging wound of breast and injuries of back. *William W. Hutchinson* (Sec. Teller), 10 P. D. (o. s.), 360.

A declaration alleging that the particular diseases claimant contracted in the service were chronic diarrhea and rheumatism is explanatory of one previously filed alleging confinement in Andersonville, and that his health was very much impaired. *Albert G. Hurst* (Actg. Sec. Joslyn), 14 P. D. (o. s.), 472.

5. Amendatory and supplementary declarations—Continued.**(a) Illustrative cases as to amendments—Continued.**

Where the disease of rheumatism, for which soldier is pensioned, was not specifically mentioned in his original declaration, filed September 4, 1876, but, in an affidavit filed subsequent to July 1, 1880, was named and proved to be the real cause of his disability, it is held that, inasmuch as the disability described by claimant in his original declaration is identical with the nature and effects of rheumatism for which pensioned, the aforesaid affidavit should be accepted as an amendment of, because germane to, the original declaration, and therefore the original declaration should be construed as in fact alleging rheumatism. Accordingly, claimant's pension should not be brought under the act of March 3, 1879, so as to subject the claim to the limitations of said act, or to deprive claimant of the arrears to which he would have been clearly entitled if the disease for which pensioned had been specifically alleged in his original declaration. *Henry S. Boardman* (Asst. Sec. Bussey), 3 P. D., 44.

Where an original declaration alleged that claimant incurred injuries by a fall from a horse, striking on his bowels, and a subsequent declaration that he was injured by said fall in side, back, bowels, and abdomen, the latter declaration is supplementary only of the former, and pension allowed on account of injury of right side should commence under the original declaration. *Albert Ordway* (Asst. Sec. Bussey), 4 P. D., 90.

When a claimant made application under the name under which he enlisted, and was subsequently requested by the Bureau of Pensions to file a new declaration correctly stating his name, such second declaration should be treated as amendatory of the first, and pension made to commence from the date of filing the first declaration if the pensionable disability was shown to have then existed. *Mitchell Malcolm, alias Malcolm Mitchell* (Asst. Sec. Reynolds), 7 P. D., 457.

6. Increase declarations—attorneys.

The Bureau of Pensions has no authority to treat an application made under the act of June 27, 1890, as an application for increase of pension under former laws. Neither has it the right to recognize an attorney appointed to prosecute a claim under the act of June 27, 1890, as attorney in a claim under prior laws without an express appointment in such claim. So much of the decision of March 6, 1893, in the pension claim of Charles B. Mullins (6 P. D., 285) as permits the adjudication of certain claims under the act of June 27, 1890, as claims for increase of pension under prior laws is set aside. *William Smith* (Asst. Sec. Reynolds), 7 P. D., 126.

See *John C. Mohrstadt*, SUBTITLE 7.

7. Under act of June 27, 1890, generally.

The declaration from the date of filing of which, subsequently to the passage of the act of June 27, 1890, pension under said act must commence when allowed, is a *formal* one only, one to which oath has been made in due form, as required by the act of July 1, 1890; and the ruling in the case of Amos Burton, 9 P. D. (o. s.), 239, and the Commissioner's ruling, No. 74, based thereon, has no application to declarations under the act of June 27, 1890. *George Alley* (Asst. Sec. Bussey), 4 P. D., 100.

Claims under the general law and claims under the act of June 27, 1890, are different causes of action, commenced by different pleadings; and a declaration under the act of June 27, 1890, containing only the allegations necessary under said act is not applicable to a declaration under the general law. *John C. Mohrstadt* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Informal declarations.

See COMMENCEMENT.

(b) Execution prior to passage of act.

The allowance or commencement of pension under the act of June 27, 1890, is not affected by the date of executing the declaration or application, whether it be prior or subsequent to the passage of said act, but only by the date of filing said declaration or application, which must be subsequent to the date of passage of said act. *Communication* (Asst. Sec. Bussey), 4 P. D., 97.

See also SUBTITLE 8.

(c) By guardians.

Under the act of June 27, 1890, as under the general law, the beneficiary or the duly constituted legal guardian must execute and file the declaration for pension. *Minors of William Martini* (Asst. Sec. Reynolds), 7 P. D., 59.

Overruled: See decision following.

Under the act of June 27, 1890, a minor may file a declaration and prosecute his claim in person, by guardian, or next friend. *William Martini*, 7 P. D., 59, overruled. *Simon P. Showalters* (Asst. Sec. Reynolds), 7 P. D., 478.

Under the act of June 27, 1890, a person *non compos mentis*, without a committee or guardian, may file a valid declaration for pension by a competent person as next friend, but before payment a guardian or committee must be appointed, and when qualified to act, the pension should be paid to him in accordance with the practice under the general law. *Simon P. Showalters*, 7 P. D., 478. *Joseph Crawford, insane* (Asst. Sec. Reynolds), 7 P. D., 582.

See also COMMENCEMENT; MINORS.

7. Under act of June 27, 1890, generally—Continued.**(d) Sufficiency of, generally.**

Where declaration under act of June 27, 1890, alleges certain disabilities which are not found on medical examination, and other disabilities pensionable in degree are found, pension should be allowed for the latter on proof that they existed at the filing of said declaration. *Ellen Lyons, widow* (Asst. Sec. Bussey), 6 P. D., 151.

If no condition or disabling cause leading to inability to earn a support by manual labor be alleged in an original application, said application or declaration shall be held void and of no effect. *Charles J. Bryant* (Asst. Sec. Reynolds), 7 P. D., 299.

See note at end of this subtitle.

If certain disabling causes are alleged, but not found upon examination, but others, unalleged, are found which in their nature are kindred, pathologically connected with, or easily mistaken for those actually alleged by one unacquainted with pathology, and it is susceptible of proof that these unalleged causes existed when the declaration was filed, and upon proof that they created a pensionable condition at the date said declaration was filed, pension may be made to commence from the date of filing the original application, as in claims under the general law. *Ibid.*

See note at end of this subtitle.

If the original declaration sets forth the existence of certain disabling causes and none whatever are found upon examination, no pension may be allowed, and further adjudication must be dependent upon the filing of a new declaration. *Ibid.*

See note at end of this subtitle.

If certain disabling causes are alleged, and upon examination during the process of adjudication others, dissimilar and not easily mistaken for those alleged, are found which contribute to an inability to earn a support, the claimant may be notified of his right to file a second declaration to cover these causes (unalleged) found upon examination; and, upon proof that these newly alleged causes existed at the date of filing the second declaration, pension may be made to commence under the first declaration, at such rate as is warranted by the condition arising from the causes therein specified, and a higher rate (if warranted), to commence from the date of filing the second declaration, upon proof that these newly alleged causes have resulted in an increased inability to earn a support by manual labor. Where, however, certificate has already issued under the first declaration, the increase under the second declaration must commence, as held in the Carley case (7 P. D., 12), "from the date of the surgeon's certificate establishing the increased disability * * * as provided by section

7. Under act of June 27, 1890, generally—Continued.

(d) Sufficiency of, generally—Continued.

4698½, Revised Statutes." This proposition is applicable where, subsequent to the filing of the original declaration, further injuries are received or diseases contracted which of themselves warrant a higher rate. *Ibid.*

(NOTE.—The decision in the case of Charles J. Bryant was nullified and abrogated by the act of March 6, 1896, and was overruled by Asst. Sec. Reynolds in the case of James J. Durkee. See subtitle following.)

(e) Decisions subsequent to act of March 6, 1896.

An original declaration or application for pension under the act of June 27, 1890, which does not show (1) that the claim is made under said act; (2) that the applicant served ninety days; (3) that he was honorably discharged; (4) that he is suffering from a permanent physical or mental incapacity for earning a support by manual labor, not due to vicious habits, shall be held void and of no effect. *James J. Durkee* (Asst. Sec. Reynolds), 8 P. D., 152.

A properly executed declaration alleging the four essentials, but defective in other particulars—such as failing to specify the disabling cause, or the company and regiment in which claimant served, or the dates of enlistment and discharge, or the fact whether he is or is not a pensioner or claimant for pension under other laws—shall be deemed a valid application to this extent; that the date of filing thereof shall be the date of commencement of the pension (if allowed), provided the evidence shall show that a pensionable disability existed at said date; but if any such particular other than the four essential elements be lacking, the claimant shall be advised thereof, and that he is required to file a new and amended declaration curing such defect, before the claim can be further adjudicated. *Ibid.*

If certain disabling causes are alleged in the original or a subsequent declaration and not found upon medical examination, or, being found, do not produce a pensionable disability, but others are found which produce or contribute to an inability to earn a support by manual labor, the claimant shall be notified of his right to file a new application to cover such unalleged causes, and, the new application having been filed, the pension, when allowed, will commence from the date of filing the first application, if it be shown that a pensionable disability then existed; if not, then it will commence from the date of filing the amended declaration, provided it is a valid one; and, therefore, every new declaration filed to remedy some defect in the original should contain all averments necessary to constitute a valid declaration. *Ibid.*

7. Under act of June 27, 1890, generally—Continued.**(c) Decisions subsequent to act of March 6, 1896—Continued.**

The soldier filed an application for pension under the act of June 27, 1890, on the 26th of April, 1892. He alleged disability from rheumatism and its results. He died on the 24th of January, 1893, of Bright's disease of the kidneys, which existed at the date of filing the application, and by which he was confined to his bed for three months before his death. It is held that the declaration in which he alleged disability from rheumatism was a sufficient application for pension for disability from disease of the kidneys, and that the disability from said cause was of such a degree as to entitle applicant to pension under the act of June 27, 1890. *John Jones* (Asst. Sec. Reynolds), 8 P. D., 329.

A declaration for pension under the provisions of section 2, act of June 27, 1890, which fails to show any of the four essential elements of title thereunder, viz, (1) that the claim is made under said act, (2) ninety days' service during the war of the rebellion, (3) honorable discharge, and (4) the existence of a permanent physical or mental incapacity for earning a support by manual labor, not due to vicious habits, is void and of no effect. (Durkee's appeal, 8 P. D., 152.) *Felix Bastien* (Asst. Sec. Reynolds), 8 P. D., 334.

A declaration for invalid pension under the act of June 27, 1890, which fails to specify any cause of disability is informal, and such informality is incapable of being cured after claimant's death; neither is such omission in a declaration supplied by a declaration for pension under the general law which alleges specific causes of disability. Citing case of *James J. Durkee* (8 P. D., 152). *Antoine Deamer alias Teamer* (Asst. Sec. Reynolds), 8 P. D., —

(f) Sufficiency as to allegation of service.

An application under the act of June 27, 1890, which states the dates of the applicant's enlistment and discharge, but omits to state that he served ninety days during the war of the rebellion, is not, by reason of such omission, defective, so as to render the filing of a new application necessary. *Israel Snyder* (Asst. Sec. Reynolds), 8 P. D., 265.

In a declaration for pension under the act of June 27, 1890, a statement of the dates of enlistment and of discharge is sufficient statement as to the length of service. *Hollis Laraby* (Asst. Sec. Reynolds), 8 P. D., —.

(g) Affidavits—when sufficient.

No affidavit filed in a claim will be accepted as an application unless it contains all the requisite allegations to constitute a valid original application for pension under the act of June 27, 1890. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

7. Under act of June 27, 1890, generally—Continued.**(h) Senility as a disabling cause.**

Where a declaration filed under said act contains no allegation as to any disabling cause, except that applicant is 75 years of age or over, such allegation of age will be held to be a sufficient allegation of disability. *Jacob Rinkel* (Asst. Sec. Reynolds), 8 P. D., 30.

Where a declaration made for pension under the second section of the act of June 27, 1890, indicates that the applicant is under the age of 75 years, and no disabling cause is alleged therein, such declaration is insufficient. *Ibid.*

A declaration under said act alleging disabling causes which are clearly pathological results of senility will be good without a formal allegation of age. *Ibid.*

A declaration alleging age, whether over or under 75 years, and disability which may be accepted as the natural pathological result of senility will be held to be good under said act. *Ibid.*

(i) Amendatory declarations.

In cases where an amendatory affidavit or declaration is required, the averments necessary to an original declaration, such as period of service, honorable discharge, permanency of the disabilities named, and the fact that they are not due to vicious habits, must be alleged. All the allegations necessary to an original application must be supplied. *Charles J. Bryant* (Asst. Sec. Reynolds), 7 P. D., 299.

(j) New declarations—when required.

Additional evidence, filed with the declared intent to show a material change in condition since the filing of original declaration or the rejection of original claim, must be in support of a new declaration, and can not be considered as supplemental or amendatory of the original declaration. *Frances Kendall* (Asst. Sec. Reynolds), 8 P. D., 197.

If a claimant shows a disability, but not in a pensionable degree, under an original application, and a subsequent examination shows a pensionable degree of same disability, he must file a new declaration to cover said disability, and pension in such case must commence from the date of the application at which a pensionable degree of disability is shown. *George A. Brown* (Asst. Sec. Reynolds), 8 P. D., 310.

(k) Increase.

No claim filed under this act shall be deemed or held to be a claim for increase of pension unless a pension has already been granted to the claimant under said act, which pension he is then receiving. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

7. Under act of June 27, 1890, generally—Continued.

(k) Increase—Continued.

In claims for increase under the act of June 27, 1890, if the declaration does not specify any causes of disability it shall be deemed a claim for increase on account of the causes already accepted; provided, however, that if the examination shall show other disabling causes the claimant shall be accorded the same right to amend his declaration as in an original claim. If new disabling causes are alleged in an application for increase the same averments must be made in regard to such disabling causes as are required in original claims. And in all cases when increase is allowed it will commence from the date of the surgeon's certificate establishing the same, as provided by section 4698 $\frac{1}{2}$, Revised Statutes. Ruling in case of Charles J. Bryant (7 P. D., 299), modified by the act of March 6, 1896. *James J. Durkee* (Asst. Sec. Reynolds), 8 P. D., 152.

Pension was reduced from \$12 to \$6 per month in the usual manner. Claim for increase was subsequently filed on account of the old and also newly alleged causes of disability, and claimant added in writing the statement that he wished to secure restoration and increase to \$12 per month. The claim was properly treated as a claim for increase, and not one for restoration, as contended for in the appeal. *Rufus A. Allen* (Asst. Sec. Reynolds), 8 P. D., —.

(l) Under section 3.

As this declaration claiming pension sets forth that service was more than ninety days, that soldier was honorably discharged, and that claimant was married to him prior to the passage of said act, it is a valid declaration under the act of June 27, 1890, although it does not allege that claimant is without other means of support than her daily labor, and it does not specifically claim pension under said act. *Ellen Lyons, widow* (Asst. Sec. Bussey), 6 P. D., 151.

Where an application of a minor for pension under the act of June 27, 1890, is filed on the sixteenth birthday of such child there is no period for which pension may be allowed thereunder, as such minor is not then under 16 years of age, and in such case it is of no avail if the exact hour of filing such application is shown to precede the exact hour of the sixteenth anniversary of such child's birth, fractions of a day not being recognized in such cases. *Thomas H. McKee's minor* (Asst. Sec. Reynolds), 8 P. D., 27.

Under the third section of the act of June 27, 1890, the essential allegations in a declaration for widow's pension are (1) that her husband served at least ninety days in the Army or Navy of the United States during the late war of the

7. Under act of June 27, 1890, generally—Continued.**(1) Under section 3—Continued.**

rebellion; (2) was honorably discharged; (3) has died; (4) that she is without other means of support than her daily labor; (5) and was married to said soldier prior to the passage of said act. A declaration which does not show these averments is void, and of no effect. *Susan M. Minor* (Asst. Sec. Reynolds), 8 P. D., 263.

A widow's declaration for pension under section 3 of the act of June 27, 1890, being complete in all respects except that it does not state that the soldier's discharge from service was honorable, the informality may be waived and the declaration accepted as valid. *Maria Blew* (Asst. Sec. Reynolds), 8 P. D., —.

8. Under act of January 29, 1887.

A declaration executed prior to the passage of the act of January 29, 1887, but filed subsequently, can not be accepted as a valid declaration under said act. Citing *Amanda Gittens*, 1 P. D., 54; nor can the attorneys empowered in such declaration derive any rights thereunder. *Widow of Thomas Hayes* (Asst. Sec. Hawkins), 2 P. D., 257.

See also SUBTITLE 7 (b).

9. Under act of July 27, 1892.

A declaration under the act of July 27, 1892, which fails to allege the claimant's citizenship may be amended so as to cure such defect. *J. B. Courson* (Asst. Sec. Bussey), 6 P. D., 189.

10. Under special act.

Where a formal declaration was filed prior to July 1, 1880, for pension under a special act (which provided pension thereunder should commence from its date), and for arrears of pension from discharge, the pensioned disability being alleged as due to service: *Held*, Application is sufficient on which to grant such arrears from discharge to date of said act. Citing *Amos Burton*, 9 P. D. (o. s.), 239. *Robert H. Brown* (Asst. Sec. Bussey), 4 P. D., 305.

Pension under a special act is not due to the heirs if the beneficiary dies without having applied therefor. *Communication to Henry M. Perrin in re George Bennett* (Sec. Cox), 7 L. B. P., 232.

A formal application for pension granted by special act must be made. *Widow of Timothy Webster* (Sec. Cox), 7 L. B. P., 149.

11. Lost declarations.

See COMMENCEMENT.

See also ACCRUED PENSION; ATTORNEYS; BOUNTY LAND (Insane and imbecile claimants); COMMENCEMENT; CONSTRUCTION OF LAWS; FEES; INSANE PERSONS; LIMITATIONS; MINORS.

DECREE.

See DIVORCE; FRAUD AND MISTAKE; JURISDICTION; MARRIAGE.

DEPARTMENTAL DECISIONS.

See APPEALS; COPIES OF PAPERS.

DEPENDENT RELATIVES.

1. General conditions of title—as to survival of widow.
 - (a) *Soldier's death must have been due to service.*
 - (b) *Dependence must have been at soldier's death.*
 - (c) *Under act of June 27, 1890.*
2. Evidence—competency of relatives.
3. Dependency—generally.
 - (a) *Contributions of soldier.*
 - (b) *Minority of soldier.*
 - (c) *Continuance of dependency.*
4. Succession of title.
5. Mothers—generally.
 - (a) *Means of support—defined.*
 - (b) *Marriage and remarriage.*
 - (c) *Remarriage—act of June 27, 1890.*
 - (d) *Adulterous cohabitation.*
 - (e) *Slave.*
6. Fathers.
7. Sisters and brothers.
8. Act of June 27, 1890.
9. Illustrative cases in mothers' claims.
10. Illustrative cases in fathers' claims.

1. General conditions of title—as to survival of widow.

If a soldier leaves at his death a widow, his parents or his brothers and sisters can have no pensionable status. *Father of Marion Pauley* (Asst. Sec. Bussey), 4 P. D., 223.

Where a soldier at the date of his death leaves a divorced wife and children over 16 years of age, his mother has pensionable status, other statutory requirements being shown. *Sarah A. Morris* (Asst. Sec. Reynolds), 7 P. D., 29.

1. General conditions of title—Continued.

(a) Soldier's death must have been due to service.

To entitle a claimant to pension as a dependent mother, under the law, it must be established that the death of the soldier, her son, was in some way due to his army service, and that her dependence existed at the date of the son's death; and the statement in the surgeon's certificate that the disability for which soldier was discharged existed prior to enlistment not only outweighs the presumption of prior soundness, but satisfactorily establishes the fact of prior unsoundness until the same is clearly disproved. *Synthia Bates* (Asst. Sec. Bussey), 3 P. D., 328.

Under either section 4707, Revised Statutes, or section 1 of the act of June 27, 1890, the soldier's death must be shown to have been due to a disability originating in service and line of duty. *Mother of Ambrose Facemire* (Asst. Sec. Bussey), 6 P. D., 204.

(b) Dependence must have been at soldier's death.

Dependence being shown to have existed at the time of the soldier's death, proof of a dependent condition subsequent to his death, and prior to the date pension commences, should not be required. *Mother of Benjamin G. Downing* (Sec. Delano), 2 P. D. (o. s.), 87.

The fact that a large portion of the property left to a mother upon the death of her husband has become unremunerative, been lost by bad investments, and her circumstances in life greatly reduced since the death of her son and her husband, has no bearing upon her right to pension in the first instance. The question is as to her condition at the time the soldier died. *Mother of William Longshaw* (Asst. Sec. Hawkins), 2 P. D., 387.

The statute (section 4707) does not provide for the contingent dependence of a mother arising years subsequent to the death of the son. The existence of the dependence "at the date of the son's death" is explicitly required. *Mother of Henry Small* (Asst. Sec. Bussey), 3 P. D., 62.

Proof of dependence at date of soldier's death is necessary to allowance of pension. *Sylvia M. Root* (Asst. Sec. Bussey), 3 P. D., 221.

Dependence at date of son's death must be shown. Citing *Eva*, mother of Jacob Brueck, deceased, March 9, 1891. *Father of Andrew Porter* (Asst. Sec. Bussey), 4 P. D., 415.

(c) Under act of June 27, 1890.

See SUBTITLE 8.

2. Evidence—competency of relatives.

In proving dependency the evidence of relatives who are not pecuniarily interested in the claim may be accepted as sufficient upon which to allow it, if evidence by those who are not relatives is not attainable. A husband is not, but children and other relatives are, competent to testify. *Mother of Daniel Reed* (Sec. Delano), 2 P. D. (o. s.), 167.

3. Dependency—generally.

Under section 4707, Revised Statutes, pension is based not upon any probable and contingent condition of dependence or of destitution which might happen, but upon such a condition shown to exist in fact at the time and to the extent required by the statute. *Father of Joseph Hyer* (Asst. Sec. Hawkins), 2 P. D., 237.

The essential feature in a claim for dependent pension is the absence or presence of a sufficient available income for support at the time of the soldier's death, and has no reference to the character or quantity of property of the claimant further than the same is indicative of the income therefrom; the sole purpose being to determine whether there was any actual necessary dependence upon the soldier for support. *Mother of Valentine S. Cumner* (Asst. Sec. Bussey), 4 P. D., 25.

There is no settled rule by which the question of dependency can be determined, but it must rest upon the peculiar facts and circumstances in each case; the age of the claimant, the number and condition of members in the family dependent upon him for support, claimant's surrounding circumstances in life, and in a mother's case the husband's physical ability to perform manual labor, his opportunities for employment, his habit of thrift and economy, and his disposition to support his family being pertinent. *Ibid.*

(a) Contributions of soldier.

Dependence, within the meaning of the pension laws, is a fact the proof of which is indispensable, and if the son did not, in fact, furnish material aid for his mother's support, she can not be pensioned although in destitute circumstances, as the law intends only to supply those means which were withdrawn by the death of her son. *Mother of John Stewart* (Sec. Cox), 7 L. B. P., 4.

Where a soldier's mother executed her notes in return for different amounts of money sent by him to her during his service, such payments by him must be considered as loans and not as contributions to her support. *Mother of Alpha V. Culver* (Actg. Sec. Cowen), 3 P. D. (o. s.), 21.

3. Dependency—generally—Continued.

(a) Contributions of soldier—Continued.

Where a son contributed his pension money toward the support of his parent, such contribution will entitle a parent to pension. *Instructions* (Sec. Teller), 12 P. D. (o. s.), 263.

Actual contributions are not necessary, but any expression on the part of the soldier of a desire or intention to contribute, or even of affection or interest in the parent's welfare merely, may be accepted as proof of his recognition of an obligation to aid in a parent's support. *Ibid.*

Under section 4707, Revised Statutes, it is sufficient to show that the parent received, at the date of the son's enlistment, support from his labor, in whole or in part, notwithstanding the fact that, for any reason, he did not actually send any of his wages as a soldier home to the parent. *Ibid.*

It is immaterial whether the son actually made contributions to the father or not, unless it also appears that such contributions were actually necessary to the parent as a means of adequate support; and where the father received average wages of \$1 per day, at and subsequent to the son's death, he is not pensionable. Citing David Rees, 2 P. D., 307. *Father of Louis Darvean* (Asst. Sec. Hawkins), 2 P. D., 372.

At the time of the soldier's death claimant's husband was furnishing her with adequate support. The soldier contributed nothing while in the service to her support: *Held*, She was not dependent. Quoting and following *Mary*, mother of Andrew J. Ault, 1 P. D. (o. s.), 135. *Mother of Francis M. Applegate* (Asst. Sec. Bussey), 4 P. D., 34.

As the son was physically incapable, after his service, of rendering any assistance in the support of his parents, no condition of dependence on him could exist. *Father of Andrew Porter* (Asst. Sec. Bussey), 4 P. D., 415.

Overruled: See *Stephen F. Williams* following.

In the absence of conclusive evidence showing the dependent or nondependent condition of claimant at the date of the soldier's death, rejection solely upon the ground that the soldier did not contribute to her maintenance because physically unable is disapproved. *Mary Ann Riley (mother)* (Asst. Sec. Reynolds), 7 P. D., 459.

Dependence upon soldier at date of his death, in section 4707, Revised Statutes, relates to the needs, wants, and necessities of the father, mother, or minor brother or sister of soldier, not to the ability of the son to furnish support. *Mary A. Franks*, 7 P. D., 43, cited and approved. *George W. Porter*, 4 P. D., 415, overruled. *Stephen F. Williams (father)* (Asst. Sec. Reynolds), 7 P. D., 507.

3. Dependency, generally—Continued.**(b) Minority of soldier.**

The soldier being a minor up to the date of his enlistment and to the date of his death, the parent would be entitled to his services if he were living, and therefore to a pension if he be dead. *Instructions* (Sec. Teller), 12 P. D. (o. s.), 263.

(c) Continuance of dependency.

In cases of dependent pensioners, they should make affidavit, or forward proof to the agent, at each period when their pension becomes due and payable, that their pensionable condition continues. *Father of Martin W. B. Ellegood* (Sec. Cox), 7 L. B. P., 60.

4. Succession of title.

Fathers and minor brothers became pensionable June 6, 1866, but where the mother survives, the father is entitled only from the death of the mother, and the brothers and sisters only from the death of the party preceding them, and if a widow or child under 16 survives, none of the other relatives can acquire title. *Instructions* (Sec. Browning), 6 L. B. P., 433.

It is only when both parents are dependent that the father's right to pension accrues upon the death of the mother, and if she was not dependent upon the son at his death, but the father was, the latter is pensionable from the date of the son's death, providing he filed an application within five years thereafter, or if the son died prior to June 6, 1866, within five years from that date. *Father of Alonzo D. Pottle* (Sec. Delano), 1 P. D. (o. s.), 444.

The father of a deceased soldier is not entitled to a dependent pension while the mother is a pensioner as dependent parent of said son, as the law does not contemplate separate pensions to husband and wife on account of the service and death of their son. *George Colony* (Sec. Chandler, 3 P. D. (o. s.), 435.

When a soldier died leaving neither widow nor child under 16 years of age, but did leave a mother, who had remarried prior to his death, and also brothers under 16 years of age, if the mother was not and the brothers were dependent upon him for support at the date of his death, the latter are pensionable, notwithstanding the fact the mother is living. Citing Alonzo D. Pottle as in conformity. *Brothers of Napoleon Beck* (Sec. Teller), 9 P. D. (o. s.), 275.

If deceased soldier left a mother dependent upon him at the date of his death, the father can have no legal right to pension during her lifetime. In case of her death, or of nondependence on her part, the father succeeds to the right to file claim for

4. Succession of title—Continued.

pension, and, if allowed, pension must commence from the date of his application. His claim is separate and independent from that of the mother. *George Borrer* (Asst. Sec. Bussey), 3 P. D., 250.

It is only upon the mother's death that a father is clothed with a pensionable status, and it can not avail him that she does not claim pension, or has been divorced from him, or has remarried. *Father of David H. Byers* (Asst. Sec. Bussey), 4 P. D., 408.

The line of succession is held, for pensionable purposes, to be inseparable from the fact of pensionable dependence itself. *Georgiana V. Colder* (sister); *Leander K. Williams*, father (Asst. Sec. Bussey), 5 P. D., 18.

Under the acts of Congress providing pension for dependent relatives, the mother of a deceased soldier is first in the line of pensionable succession. *Ibid.*

The father of a deceased soldier is second in the line of dependent relatives for pensionable purposes, but his pensionable rights do not accrue until after the mother's death. *Ibid.*

No pension is provided by law for a dependent brother or sister until after the termination, by death or remarriage, of the prior right to pension of the dependent mother and father; and, at that date, the alleged dependent brother or sister must be under 16 years of age. *Mary A. McElpatrick* (Asst. Sec. Bussey), 5 P. D., 278.

5. Mothers—generally.

In mothers' claims, under act of March 3, 1873, section 4707, Revised Statutes, it must be shown (1) that the claimant at the date of the death of the son had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of the son or of others not legally bound to aid in her support; (2) that the son had recognized his obligations to aid in support of said mother, or was by law bound to such support; (3) that the necessity of the pension as a means of adequate subsistence exists. *Mary Ault* (Sec. Delano), 1 P. D. (o. s.), 135.

There is no authority of law for allowance of pension to a dependent mother for any period prior to the date of death of the son on whose account she is pensioned. *Mother of James A. Westbrook* (Actg. Sec. Bell), 8 P. D. (o. s.), 433.

In those States wherein the son is bound by law to support his dependent mother, it is only necessary to show, to entitle her to pension, that she supported herself by her own manual labor after her son's enlistment. In those States where no such

5. Mothers—generally—Continued.

statute exists the question depends upon the circumstances of each case, and if she has no adequate support except by her own labor she would be dependent under the law. A mother's condition must be such that she would be in fact dependent upon the son if he were living. *Instructions* (Sec. Teller), 12 P. D. (o. s.), 263.

A mother shall be assumed to have been dependent upon her son within the meaning of section 4707, Revised Statutes, if at the date of his death she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of her son, or of any other person not legally bound to aid in her support. *Ellen Welch* (Asst. Sec. Bussey), 5 P. D., 394.

(a) Means of support, defined.

What are adequate means of support must depend upon the condition in life and the circumstances surrounding each case, but in every case it should be sufficient to support the mother in that condition in life in which she has lived. *Instructions* (Sec. Teller), 12 P. D. (o. s.), 263.

Where the amount of property possessed by a mother having no other means of support is so small that it will not yield an income sufficient to support her, and it is not probable that she could dispose of it in any way that would render her reasonably secure of a maintenance during the remainder of her life, it should not be regarded as "adequate" to her needs, and should not deprive her of the right to pension. *Melcenia E. Gloyd* (mother) (Asst. Sec. Reynolds), 7 P. D., 413.

(b) Marriage and remarriage.

Whether a soldier's parents were lawfully joined in wedlock or not is not a material question in a mother's claim for pension. *Mother of Patrick Bush* (Actg. Sec. Otto), 5 L. B. P., 140.

Under the third section of the act of July 14, 1862, the mother of a deceased soldier, if dependent in whole or in part on him for support, is entitled to the pension allowed by law, whether she be married or a widow; but if she remarries after the allowance of the same she forfeits such pension. *Atty. Gen. Bates*, 10 Op., 341.

The fact the father is pensioned as an invalid does not impair the mother's right to pension on account of her dependence on her deceased son. *Mother of John Stewart* (Sec. Cox), 7 L. B. P., 4.

A mother need not show that her husband was disabled for a period during which she could not draw pension. *Mother of William J. Shane* (Sec. Delano), 2 P. D. (o. s.), 380.

5. Mothers—Continued.

(b) Marriage and remarriage—Continued.

A husband being bound to support his wife unless she is delinquent toward him, the sufficiency of the maintenance afforded by him is a material question; but whether his failure to provide for her was due to his fault, neglect, or misfortune is immaterial, unless it be due to a voluntary relinquishment of his aid by her, without justifiable cause; and when the parties had no property from which they derived an income adequate to their support, the most convincing proof that she was not maintained by her husband will be evidence that he was physically unable to support her, but the fact that he was not so disabled is not of itself a sufficient reason for deciding that she was not dependent on her son. *Mother of Lyman D. Morehouse* (Sec. Kirkwood), 9 P. D. (o. s.), 130.

Neither the fact of remarriage prior to her son's death in the service, nor the existence of a husband by the first marriage at the date of the soldier's death, destroys a mother's pensionable status, unless nondependence itself be thereby actually proved. *Mother of Abram Van Alstine* (Asst. Sec. Bussey), 4 P. D., 394.

At the time of the son's death the mother was employed at manual labor as a means of support; the son prior and subsequent to his enlistment contributed from his wages to her support: *Held*, She was dependent under the law, notwithstanding she may have remarried prior to her son's enlistment. *Ibid*.

The pension granted a dependent mother may be terminated by her remarriage, or upon proof that her condition of pensionable dependence has ceased by reason of some source of adequate subsistence other than the proceeds of her own manual labor, etc. *Margaret Ridenour* (Asst. Sec. Bussey), 5 P. D., 146.

A mother's remarriage prior to her son's death raises the presumption that she was not dependent upon said son at the time of his death; and she being shown to be, for this reason, not dependent upon the soldier, his minor brothers and sisters are pensionable if so dependent. *Sisters of Ferdinand Southard* (Asst. Sec. Bussey), 6 P. D., 47.

(c) Remarriage—act of June 27, 1890.

A mother's remarriage prior to filing application under the act of June 27, 1890, is no bar to pension under said act. *Mother of John E. Ayres* (Asst. Sec. Bussey), 6 P. D., 30.

A soldier's mother who has remarried after his death, and filed a claim for dependent mother's pension subsequent to July 1, 1880, and prior to June 27, 1890, has no pensionable

5. Mothers—Continued.**(c) Remarriage—act of June 27, 1890—Continued.**

status or title to pension on his account under section 4707, Revised Statutes. *Sarah N. Chase, mother* (Asst. Sec. Reynolds), 7 P. D., 543.

Section 4707, Revised Statutes, is only modified by the first section of the act of June 27, 1890, to the extent of substituting present dependence in place of dependence at date of soldier's death, and such mother's remarriage prior to the passage of said act is no bar to pension thereunder. *Mary Kille, mother* (Asst. Sec. Reynolds), 7 P. D., 550.

(d) Adulterous cohabitation.

Where a mother at the date of her son's death had, without just cause, deserted her husband, who was able to support her, and was living in adultery, she is not dependent. *Jane Ingerick* (Asst. Sec. Hawkins), 1 P. D., 394.

While the birth of claimant's illegitimate child prior to her son's enlistment (which was prior to 1882) would not in itself deprive her of pension under the law, yet it stamps her subsequent residence and continuous association with the father of said child with an indelible stain of immorality, making the presumption conclusive and irresistible that such association was one of "open and notorious adulterous cohabitation," and their relation that of mistress and paramour, which precludes the idea of her dependence at the same time upon said son. Her pension was properly withdrawn, and restoration properly refused. *Mother of Charles Knappenberger* (Asst. Sec. Hawkins), 2 P. D., 56.

In a claim for pension under the general law by a mother, the fact being shown that she was living as a mistress at the time of the soldier's death is sufficient for rebutting an assumption of dependence, based upon proof of absence of means of support other than those mentioned in section 4707, Revised Statutes, and proof that by "actual contributions or in any other way the son had recognized an obligation to aid in support of his mother." Ruling No. 105 is affirmed. *Caroline Knappenberger* (3 P. D., 263) is affirmed in part. *Elizabeth Van Huff, mother* (Asst. Sec. Reynolds), 7 P. D., 474.

(e) Slave mothers.

Under section 4723, Revised Statutes, the mother of a colored soldier is pensionable the same as the mother of a white soldier, notwithstanding the fact she may have been a slave at the time of her son's death, if she prove such dependence on said son as would entitle her if she were a white person. *Mother of Robert Bryant* (Sec. Chandler), 3 P. D. (o. s.), 69.

5. Mothers—Continued.

(c) Slave mothers—Continued.

Claimant was a slave at the date of her son's enlistment, and remained with and was supported by her master until the close of the civil war and after her son's death, and said son never contributed to her support. It is held that she was not dependent on her son for support under section 4707, Revised Statutes. Citing with approval *Margareta Neher* (2 P. D., 347). *Eliza Hughes* (Asst. Sec. Bussey), 3 P. D., 21.

In defining a mother's pensionable dependence, the law (section 4707, Revised Statutes), makes no discrimination between races, whether white and free, or black and slave; nor does it contain any expression that would warrant the inference that the "labor" of a slave, due by reason of law to his master, may be construed as a "contribution" to the support of his mother, also a slave, and supported by her master. *Mother of Henry Small* (Asst. Sec. Bussey), 3 P. D., 62.

At the date of soldier's enlistment and death, both he and claimant were, in law, slaves in Kentucky; and the proceeds of his labor, as well as hers, legally belonged to their master, who was legally bound for their support, and under the decision in the case of *Elizabeth Small* (3 P. D., 62), claimant was not dependent on her said son for support within the meaning of section 4707, Revised Statutes. *Ruth Jones* (Asst. Sec. Bussey), 3 P. D., 279.

It appearing that this appellant was, at the date of the death of her son, the deceased soldier (February 25, 1864), a slave, residing upon the plantation of her owner and master in the State of Mississippi, and being maintained and supported by him as such, and that the deceased soldier never in any manner aided in her support, or contributed thereto, she was not dependent upon her said son for support within the meaning and intent of the provisions of section 4707, Revised Statutes, and has no title to pension thereunder. *Harriet Tinnin* (Asst. Sec. Reynolds), 8 P. D., 218.

The proclamation of President Lincoln of January 1, 1863, known as the emancipation proclamation, was effective only as a "war measure," and did not ipso facto, and by mere force of its own terms, set free or change the legal status of persons held in slavery in the States, or parts of States, therein designated, but operated to give freedom to such persons only when it was enforced by the armed forces of the United States, and by the subjugation of the territory where they resided and its subjugation to the military power and authority of the Federal

5. Mothers—Continued.**(e) Slave mothers—Continued.**

Government. Dana's Wheaton's International Law, 444; Lawrence's Wheaton on International Law, 579-617; Story on Constitution (4th ed.) sec. 1923; 7 Wall., 700; 105 U. S., 132; 39 Ala., 706; 42 Ala., 601; 12 Fla., 472; 24 Ark., 326. *Ibid.*

6. Fathers—generally.

Congress evidently intended to provide for the father only in case his necessitous circumstances were such as to require for his support the aid of his son, and such aid was actually furnished. *Father of Martin W. B. Ellegood* (Sec. Cox), 7 L. B. P., 60.

A dependent father's pension should be withheld during the period he is in employment at an annual salary of \$750. *Ibid.*

To entitle a soldier's father as a dependent it must be shown that at the soldier's death the father had no adequate means of support other than the soldier's contributions or those of another person not legally bound to aid in his support, and that he was unable to derive from his own actual or possible labor sufficient income to furnish him means of support. *David Rees* (Asst. Sec. Muldrow), 2 P. D., 307.

In a claim of a father for pension it must be shown that he was legally married to the mother of the son on whose account the claim is made. Section 4705, Revised Statutes, does not apply to marriages of parents of a soldier. *Henry Walden, father of James Hubbard* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Remarriage.

The remarriage of a father does not forfeit his right to pension. *Father of George W. Frazier* (Sec. Delano), 8 L. B. P., 154.

7. Sisters and brothers—generally.

An alleged dependent sister is required by the law to prove, first, orphanage; second, pensionable minority, and third, dependence for support upon the deceased soldier. *Georgiana V. Colder, sister; Leander K. Williams, father* (Asst. Sec. Bussey), 5 P. D., 18.

Claimant's title to a dependent sister's pension does not depend upon the validity of the marriage of the parents of claimant and her brother. *Priscilla J. Cotton* (Asst. Sec. Reynolds), 8 P. D., 18.

8. Act of June 27, 1890.

Under said act a parent must prove (1) death of son by reason of a wound, injury, or disease, which under prior laws would have entitled him to pension; (2) that no widow or minor child survived him; (3) that the parent is at present dependent on her or his own manual labor, being without other present means of support than their own manual labor, or the contributions of others not legally bound for their support. *Communication* (Asst. Sec. Bussey), 4 P. D., 225.

The first section of the act approved June 27, 1890, confers pension for present dependence of the parent, and the pension thereby granted must begin from the date of filing the claim under said act. *Ann E. Stratton* (Asst. Sec. Bussey), 5 P. D., 415.

Where a claimant for pension as dependent father under the act of June 27, 1890, is shown not to be in need of any support, but, on the contrary, is enabled by his own manual labor to earn more than is necessary to an adequate support, it is held that he is not pensionable. *James A. Hayes, father* (Asst. Sec. Reynolds), 7 P. D., 190.

Section 1 of the act of June 27, 1890, stands in *pari materia* to other existing laws, and all must be considered together. Said section is remedial in character, modifies the rule as to evidence, and permits the pensioning of those who can establish dependence at the date of filing the application instead of at the date of the soldier's death, but the conditions attaching to dependence itself are not changed. *Ibid.*

Where the father and the mother of the soldier are without property, and the father is unable to support the family, the mother is dependent within the meaning of the act of June 27, 1890. *Sally Wood, mother* (Asst. Sec. Reynolds), 7 P. D., 336.

A mother who is 75 years old, and whose sole means of support are \$1,130, yielding an income of \$72.80 per year, is dependent within the meaning of section 4707 Revised Statutes, and section 1, act of June 27, 1890. *Melcenia E. Gloyd, mother* (Asst. Sec. Reynolds), 7 P. D., 413.

Section 1 of the act of June 27, 1890, must be construed in connection with section 4707, Revised Statutes, and the words "other present means of support" are held to mean "other present means of an adequate support." *Josina Kring, mother* (Asst. Sec. Reynolds), 7 P. D., 420.

A mother who (so far as her property and interests are concerned, and her ability to get a support without the contributions of others not legally bound to aid her) is virtually

8. Act of June 27, 1890—Continued.

without means and wholly dependent is pensionable under said act, notwithstanding that a son, not legally bound to aid in her support, does furnish her a comfortable support. *Ibid.*

The father of a deceased soldier has no pensionable status under the provisions of the act of June 27, 1890, during the lifetime of such soldier's mother. *Jason W. Cleveland, father* (Asst. Sec. Reynolds), 7 P. D., 542.

Section 4707 is only modified by the first section of the act of June 27, 1890, to the extent of substituting present dependence in place of dependence at date of soldier's death. *Mary Kille, mother* (Asst. Sec. Reynolds), 7 P. D., 550.

9. Illustrative cases in mothers' claims.

An annual income of \$167.46 does not constitute an independence barring right to pension in a mother's case. *Mother of Alpheus Wilson* (Sec. Browning), 6 L. B. P., 448.

Where a dependent mother has an annual income of \$540 from railroad bonds valued at \$9,000, is 72 years of age, has two unmarried daughters depending upon her for support, and is incapacitated by the infirmities of age from assisting in her support, being in fact partially dependent upon others therefor, and being in a large city where living expenses are great, she is dependent within the meaning of the law. *Mother of Jones Pile* (Sec. Delano), 1 P. D. (o. s.), 437.

It being clearly shown that the claimant's husband has been, since long before the rebellion, physically incapacitated from obtaining a subsistence by manual labor, and has secured a bare living only with the aid, sometimes, of his wife, by keeping a hotel or boarding house, and at different periods as a doorkeeper in the legislature and as keeper in the poorhouse, and that the son sent his mother, while he was in service, over \$600 in sixteen months, it is held the mother's pensionable dependence is proven. *Mother of George W. Rector* (Sec. Chandler), 3 P. D. (o. s.), 325.

Where claimant, the mother of soldier, prior to son's death, and subsequent thereto, had a home and an average annual income of more than \$300, hers was not a case of dependence, and should be rejected. *Mother of Thomas Tennant* (Actg. Sec. Bell), 5 P. D. (o. s.), 289.

Father's claim was properly rejected upon facts presented showing that at date of son's death claimant was not disqualified for earning a support by his own manual labor, except so far as his habits of intemperance interfered therewith. *David R. Fuller* (Sec. Schurz), 6 P. D. (o. s.), 231.

9. Illustrative cases in mothers' claims—Continued.

Claim of mother was properly rejected upon facts presented showing that prior to son's death, and subsequent thereto, the father was regularly employed at a compensation of \$2.25 per day, and that he owned a house in which he and claimant lived. *Mother of Isaac M. Allen* (Sec. Schurz), 6 P. D. (o. s.), 233.

Where at date of claimant's son's death her husband was constantly employed at the maximum wages paid workmen of the class of workmen to which he belonged, she is not deemed dependent on her son for support within the meaning of the pension laws. *Ann Tobin* (Sec. Schurz), 6 P. D. (o. s.), 362.

Where father received an annual income varying from \$600 to \$800 prior and subsequent to the death of his son, together with board for himself and wife: *Held*, That this was not a case of dependence within the meaning of the law, and rejection is affirmed. *Caroline E. French* (Sec. Schurz), 7 P. D. (o. s.), 35.

Two hundred and fifty dollars per annum is not regarded as sufficient for a comfortable maintenance of the husband and the claimant, and they were, therefore, dependent on their son for support within the meaning of the law. *Sarah Trimble* (Sec. Schurz), 7 P. D. (o. s.), 303.

This claimant's income at the date of her son's death being \$315 per year, it is held it was adequate to her support in that condition of life in which she was then living; but as she was, at date of filing her claim, eighteen years later, 82 years of age, without any means of support, and actually dependent upon friends for subsistence, pension should be allowed in accordance with the ruling in case of *Mrs. Eastman Pile*, March 19, 1874, Sec. Delano, and with the beneficent spirit and intent of the pension laws. *Mother of Charles R. Prescott* (Sec. Teller), 12 P. D. (o. s.), 477.

It is believed the letter of the law relates more to the wants and necessities of the mother for aid from the son than to the son's physical ability to render such aid; and it being shown herein that the son was, at the time of his death, financially and physically unable to contribute to the support of his mother, and that the father, her husband, was physically unable to do more than light labor, being disabled and nearly 70 years of age, and that the son was, in fact, a charge upon his parents, it is held the mother's claim should be allowed. *Mother of Thomas Cameron* (Sec. Teller), 12 P. D. (o. s.), 482.

The fact that the husband misapplied his earnings does not establish dependence of the mother upon the son. *Charlotte Letterman* (Asst. Sec. Hawkins), 1 P. D., 43.

9. Illustrative cases in mothers' claims—Continued.

A life interest in a farm of 155 acres, the assessed valuation of which, in 1862, was \$1,550, with \$940 worth of personal property, claimant's admission to special examiner and the testimony all tending to show adequate subsistence, does not constitute a case of dependence. *Francis Mattingly* (Asst. Sec. Hawkins) 1 P. D., 152.

A support of dependent mother provided in pursuance of a contract, the consideration therefor being the use of a farm and stock in which she had a life interest, is deprived of the character of a contribution, and is not affected or changed by the inadequacy of the consideration, it not appearing that such support fell short of an adequate subsistence. *Louisa C. Morrison* (Asst. Sec. Hawkins) 1 P. D., 306.

Where the claimant's husband owned, up to soldier's death, an improved farm of 160 acres, and furnished his family, including claimant, an adequate support, she, the claimant, was not dependent upon the soldier under the law, although the latter, prior to his enlistment and while a minor, assisted in his parents' support, and during his service subscribed \$10 a month to them, which was paid up to his death in service. *Mother of James E. Cushman* (Asst. Sec. Hawkins), 2 P. D., 166.

Where a soldier's mother at the time of his death was receiving an adequate support from the proceeds of her husband's farm and the income derived by him from his trade as a cooper, she is not dependent. *Mother of Abram Switz* (Asst. Sec. Hawkins), 2 P. D., 342.

At the time of the soldier's death claimant was residing with her husband upon a well-improved farm, from which they derived an adequate and comfortable support, which farm was then assessed for taxes at nearly \$1,400 and was sold a few years later for \$4,000: *Held*, Such a state of affairs necessarily precludes existence of such a condition of dependence upon the soldier for the necessity for pension as an adequate means of subsistence for any period since his death as would entitle to a dependent pension. *Mother of Charles Neher* (Asst. Sec. Hawkins), 2 P. D., 347.

Claimant's husband being, at the time of the soldier's death, possessed of property assessed at over \$5,000, and conducting a retail drug business from which they derived a comfortable support, she was not dependent, although the soldier made contributions, and it is immaterial that such contributions were made. *Mother of William Longshaw* (Asst. Sec. Hawkins), 2 P. D., 387.

9. Illustrative cases in mothers' claims—Continued.

Where the evidence shows that claimant and her husband owned a farm that yielded "a comfortable support" for the family so long as the husband lived, and that the adequacy of that support was not appreciably affected by the death of the soldier, it is held that pensionable dependence does not exist. *Martha Gill* (Asst. Sec. Bussey), 3 P. D., 274.

It being proved that claimant was, at the date of her son's death, compelled, in order to secure support for herself and family, to labor incessantly as a tailoress, her husband having been for years sickly and unable to perform ordinary manual labor; that a mutual understanding existed between parents and soldier that he would take care of them, and that he sent money to them while he was in service, it was held that claimant was dependent. *Mother of Valentine S. Cumner* (Asst. Sec. Bussey), 4 P. D., 25.

On the evidence in this case dependence is considered proved and *Ellen Welch*, 5 P. D., 394, is overruled, so far as it construes section 4707, Revised Statutes. *Mary A. Francks* (Asst. Sec. Reynolds), 7 P. D., 43.

A widow mother, 77 years of age, whose only property consists of her home, paid for in part by her dependent mother's pension money, and which, with her personal property, valued on assessment at \$1,000, does not yield her a support without her daily labor, is dependent within the meaning of the pension laws. *Mary Kille* (Asst. Sec. Reynolds), 7 P. D., 550.

10. Illustrative cases in fathers' claims.

As under the laws of Ohio a husband is entitled to the rents and profits of real estate belonging to his wife unless she leases such estate, the husband's pensionable status as a dependent father depends, in this case, upon the fact whether his wife has leased her property. Her property in this claim consisted of a farm of 75 acres, valued at \$3,750. If she has not leased it her husband, the father, is not pensionable. *Father of Clement Marsh* (Actg. Sec. Smith), 2 P. D. (o. s.), 415.

Where a soldier's father was so deaf as to be disabled, to a large extent, from obtaining a subsistence for himself and family, and was retained by his employer only because he had no other means of support, and the son, prior to his enlistment, worked in his father's store without salary, and also, prior to enlistment, made cash contributions to his father, it is held the father was dependent within the meaning of the law, and is pensionable. *Father of Noah E. Mendell* (Actg. Sec. Gorham), 3 P. D. (o. s.), 474.

10. Illustrative cases in fathers' claims—Continued.

Where father, during period of alleged dependence, subsequent to the son's death, received by his earnings on an average \$600 per year: *Held*, That it was not a case of dependence within the meaning of the law. *Father of Francis J. Bilhartz* (Actg. Sec. Gorham), 4 P. D. (o. s.), 6.

Where the mother of a soldier had, "prior to the breaking out of the rebellion," abandoned her husband and their children (including the soldier), and it appearing from the evidence that the father "had the sole care and custody of the children after being abandoned by their mother," and that he "was dependent upon the soldier for support within the meaning of the law granting pensions to dependent parents," it was held, on appeal, that such father was entitled to pension. *David Taylor* (Sec. Lamar), 16 P. D. (o. s.), 246.

Where a soldier's father was deriving, at the time of the soldier's enlistment, a comfortable support from his farm, and continued thereafter to derive such support therefrom, he is not dependent under the law because deprived of such son's services in managing said farm. *Father of Joseph Hyer* (Asst. Sec. Hawkins), 2 P. D., 237.

Where a soldier's father at the date of the soldier's death was in fair health, and by working at his trade as blacksmith supported his family in comparative comfort with the proceeds of his labor, and had also the assistance of two minor sons, younger than the soldier, he was not dependent under the law, although the soldier may have contributed to his support, prior to his enlistment, a portion of the proceeds of his own labor. *David Rees* (Asst. Sec. Muldrow), 2 P. D., 307.

This claimant, being physically so disabled as to be from that cause dependent upon the soldier for support at the date of the latter's death, is pensionable as a dependent father, there being a clear distinction between cases where the father is poor and disabled, unable by reason of his physical disability to procure an adequate support, and cases where, being able-bodied, he neglects or refuses to labor to the extent of his physical ability; and it is immaterial whether a disability was the result of vicious habits. *Father of James O'Hare* (Asst. Sec. Hawkins), 2 P. D., 370.

Where a father's dependence upon a son for support was due, not to his incapacity for earning a support, but to his habits of intemperance and unwillingness to maintain himself, he is not pensionably dependent. Citing and approving *David R. Fuller*, November 22, 1879. *Father of William Casteel* (Asst. Sec. Bussey), 4 P. D., 271.

10. **Illustrative cases in fathers' claims**—Continued.

Where a father who was in prison serving sentence prior to, at the time of, and subsequent to his son's enlistment, applied ~~for and~~ secured pension as a dependent father, such claim was fraudulent. *Mother of Abram Van Alstine* (Asst. Sec. Bussey), 4 P. D., 394.

In a case of a father who is **unable to** labor, the mere possession of an interest in a farm producing ~~an income~~ of \$60 per annum, should not exclude him from pension ~~under~~ section 4707, Revised Statutes, or section 1 of the act of June 27, 1890. *Joseph K. Smith* (Asst. Sec. Reynolds), 8 P. D., 9.

The fact that a father, at the date of his son's death, was also in the service of the United States, receiving the pay and allowances of a private soldier does not bar the allowance of pension upon the ground of nondependence, it being shown that he was, by reason of age and disabilities, placed in the Veteran Reserve Corps. *Joseph J. Hicks* (Asst. Sec. Reynolds), 8 P. D., —.

See also ACCRUED PENSION; COMMENCEMENT; CONSTRUCTION OF LAWS; DECLARATIONS; DESERTION; EVIDENCE (Special act); EXAMINATIONS (Special); FATHERS; INDIGENCE; MARRIAGE; WIDOWS.

DEPUTY PROVOST-MARSHAL.

See SERVICE.

DESCENT.

See ACCRUED PENSION; BOUNTY LAND; CONSTRUCTION OF LAWS; SPECIAL ACT.

DESERTER'S RELEASE.

The act of April 11, 1890, neither requires nor authorizes the Secretary of War to grant a deserter at large a discharge from the military service. It authorizes merely a release from liability to arrest, trial, and punishment by court-martial, for alleged desertion. *Frank Wempe* (Asst. Sec. Bussey), 5 P. D., 339.

A deserter's release under act of April 11, 1890, is in no sense a discharge or release from the service. *William T. Coburn* (Asst. Sec. Reynolds), 7 P. D., 182.

DESERTION.

1. As a bar to pension, generally.
2. Deserter at large has no pensionable status.
(a) *Under act of June 27, 1890.*
3. Even though disability was incurred in prior service.
4. Where soldier returned and was restored to duty.
(a) *Contra, if injured while under arrest after capture from desertion.*
5. Desertion from first, with discharge from second service.
(a) *Contra: such desertion bars pension.*
6. Widow of deserter at large not pensionable.
(a) *Except under act of June 27, 1890.*
7. Removal of charge of desertion.

1. As a bar to pension, generally.

Desertion forfeits all claim to bounty land, pay, pension, and every gratuity whatever. *Opinion by the Commissioner of Pensions* (concurrent in by Sec. Porter), Pension Laws, etc. (1849), 124.

2. Deserter at large has no pensionable status.

It appears from the report of the Adjutant-General that after the alleged disability on account of which claim is made, this soldier deserted while on furlough. The rejection is evidently right and in accordance with the previous rulings of this Department in similar cases. *Stephen D. Huling* (Sec. Kirkwood), 6 L. B. P., 507.

A soldier in the war of 1812, who deserted from service therein and was never discharged, is not pensionable as a survivor of said war. *Daniel McAlpine* (Sec. Delano), 2 P. D. (o. s.), 370.

An honorable discharge is essential to entitle soldiers of the Mexican war to pension for disabilities; and a soldier whose final record was that of desertion is therefore not pensionable. *John G. Kelly* (Actg. Sec. Bell) 8 P. D. (o. s.), 229.

The pension system requires a discharge from the service as a prerequisite to pension. A deserter is constructively in the service so long as the charge of desertion lingers against him. Said charge must be removed by operation of law or by the War Department, in order that the soldier may become a lawful claimant for pension; nor can a mother be pensioned on account of a son who died while a deserter. *Elizabeth A. Gannon (mother)* (Asst. Sec. Bussey), 3 P. D., 67.

A discharge from the service is a prerequisite to pension, and a deserter can not be pensioned until formally discharged,

2. Deserter at large has no pensionable status—Continued.

either honorably or dishonorably, as the character of discharge neither bars nor affects his or his widow's right to pension; nor can his widow be pensioned until the record of desertion, existing against him at the time of his death, be removed. *Widow of John Ward* (Asst. Sec. Bussey), 4 P. D., 350.

Where the records of the War Department show a soldier deserted and was never discharged, and that Department refuses to remove such charge of desertion, such soldier has no pensionable status. Citing *James H. Carpenter*, 8 P. D. (o. s.), 452. *Syprian Archambault* (Asst. Sec. Bussey), 6 P. D., 240.

A deserter at large with a charge of desertion unremoved is held to be constructively in the service and nonpensionable under the provisions of section 4724, Revised Statutes. *William T. Coburn* (Asst. Sec. Reynolds), 7 P. D., 182.

See *James W. Miller*, subtitle following.

Claim was filed October 9, 1889, while claimant was in desertion, and therefore had no status to apply. Claimant was finally discharged September 15, 1892; his pension was very properly made to commence at the date of filing a declaration after he was discharged. *Charles T. Garrard* (Asst. Sec. Reynolds), 7 P. D., 548.

An honorable discharge from all service contracted to be performed during the war of the rebellion is a prerequisite to pension under the second section of the act of June 27, 1890, and appellant's desertion from the United States service in 1863 and failure to receive an honorable discharge bars his right to pension under said act. *Isaac N. Babb, alias John Dunlap* (Asst. Sec. Reynolds), 8 P. D., 59.

A claimant against whom there stands a charge of desertion under an enlistment for service in the war of the rebellion, which charge the War Department declines to remove, has no title to pension under any existing law on account of disability incurred in said war or service performed therein. *George Lessor* (Asst. Sec. Reynolds), 8 P. D., 114.

(a) Under the act of June 27, 1890.

A soldier who is a deserter at large from the Regular Army is not pensionable under the act of June 27, 1890, so long as the charge of desertion stands against him in the War Department unremoved. *Morris Burton* (Asst. Sec. Reynolds), 7 P. D., 188.

See *James W. Miller*, following.

The act of June 27, 1890, makes a distinction between the pensionable rights of a soldier and those of his widow. Unlike former laws, the rights of the widow are not dependent upon

2. Deserter at large has no pensionable status—Continued.*(a) Under the act of June 27, 1890—Continued.*

the pensionable status of her husband. Hence desertion from a subsequent service, while a bar to soldier's pension, is no bar to widows. *Ibid.*

Appellant was not finally discharged from the service he contracted to render during the late war of the rebellion, and his claim for pension filed under the act of June 27, 1890, was properly rejected. *Henry Davinney* (Asst. Sec. Reynolds), 7 P. D., 233.

Desertion of soldier from Regular Army, in which he enlisted subsequent to the close of the war of the rebellion, is not a bar to widow's claim for pension under the act of June 27, 1890. *Catharine Tubah* (Asst. Sec. Reynolds), 8 P. D., 82.

Desertion from the Regular Army under an enlistment subsequent to the war of the rebellion is not a bar to allowance of pension under the act of June 27, 1890. Cases overruled: *C. W. Hatfield* (5 P. D., 349), *Susan Colgin* (5 P. D., 127), *Charles H. Eding* (5 P. D., 234), *Mary E. Gresham* (6 P. D., 84), *Morris Burton* (7 P. D., 188), *William T. Coburn* (7 P. D., 182), and all other similar cases, in so far as they are in conflict with this case. *James W. Miller* (Asst. Sec. Reynolds), 8 P. D., 316.

3. Even though disability was incurred in prior service.

When a soldier incurs a disability in the service and has been discharged, but subsequently reenlists and deserts, there is no authority for withholding the pension granted on account of said disability prior to his reenlistment other than the provisions of law that a pensioner shall not, for the same period, receive his pension and the pay of his rank or station in the service. *Benjamin Robbins* (Sec. Schurz), 6 P. D. (o. s.), 486.

A deserter from a second enlistment for service during the war of the rebellion is not pensionable even for a disability contracted under a prior enlistment from which he was honorably discharged. A final discharge from service in said war is required. *Charles H. Eding* (Asst. Sec. Bussey) 5 P. D., 234.

See *James W. Miller*, ante.

Soldier served from April 17, 1861, to August 18, 1861, when he was honorably discharged. He claimed, June 28, 1880, pension for disability incurred during this service. He subsequently enlisted, August 1, 1862, for three years, and deserted September 5, 1862, and never returned to the service. It is held that, as his application for pension was not filed nor prosecuted prior to his second enlistment, from which he deserted, his

3. Even though disability was incurred in prior service—Cont'd.

pension, if allowed, would commence from the date of his final discharge from the service, and, not having received such final discharge from said last enlistment, there was no date from which his pension could legally be made to commence. *Henry Davinney* (Asst. Sec. Bussey), 5 P. D., 288.

Overruled: s. c. (Asst. Sec. Reynolds), 7 P. D., 233.

Claimant was pensioned from discharge for gunshot wound of hip. November 28, 1867, he enlisted in the Regular Army and deserted November 27, 1870. His pension was restored in 1889, deducting the time from enlistment in the Regular Army to the date of his desertion. It is held that, as he was never finally discharged from his enlistment in the Regular Army, he was never entitled to pension subsequent to his second enlistment. *George W. Freeman* (Asst. Sec. Bussey), 5 P. D., 361.

A "deserter at large" from a second enlistment in the service of either the Army or the Navy is not recognized by the law as entitled to pensionable status. A final discharge from the service is essential to a valid claim for pension. *William J. McFalls* (Asst. Sec. Bussey), 5 P. D., 364.

Under the provisions of the act of January 29, 1887, the widow of a soldier entitled to a pension by reason of her husband's service and honorable discharge in the Mexican war is not barred by reason of her husband's desertion from service in the war of the rebellion. *Bridget Kelley* (Asst. Sec. Reynolds), 7 P. D., 128.

Applicant claims pension for disabilities contracted in the line of duty during a term of service from which he was honorably discharged. His claim was rejected on the ground that he was a deserter at large from the service under a subsequent contract of enlistment: *Held*, That on establishing the incurrence of the disability in said perfected service and in the line of duty he is pensionable for the period intervening between his discharge from said service and his subsequent enlistment, and the former decision of the Department in this case (5 P. D., 288) is overruled and set aside. *Henry Davinney* (Asst. Sec. Reynolds), 7 P. D., 233.

A soldier who is a deserter from the military service of the United States and has never been discharged therefrom is not pensionable under any law for any period subsequent to his said enlistment and desertion, for the reason that there is no period of time during which he was legally released or separated from such service. *Peter Kenney* (Asst. Sec. Reynolds), 7 P. D., 588.

3. Even though disability was incurred in prior service—Cont'd.

When a soldier was discharged to reenlist, and did then and there reenlist as a veteran volunteer, and thereafter deserted from the service and never returned to or was discharged from said service, he is not pensionable under any law for any disability contracted under the enlistment from which he was discharged or that from which he deserted, for the reason that there was no period of time during which he was regularly and legally released or separated from the service *Ibid.*

4. Where soldier returned and was restored to duty.

Desertion is no bar to pension if soldier returned to service and was killed in line of duty while serving out his original enlistment, although sentenced by a court-martial to serve, after the expiration of said enlistment, an additional term on account of said desertion. *Widow of Henry L. Burns* (Sec. Browning), 6 L. B. P., 326.

A deserter who returned and was restored to duty, was wounded in action, and honorably discharged may be pensioned though the charge of desertion was not removed. *Salatha C. Arterberry* (Asst. Sec. Hawkins), 1 P. D., 378.

A mere record of desertion, where the soldier returned to the service, was readmitted, and thereafter formally discharged, is not a bar to pensionable status. *Daniel C. Lewis* (Asst. Sec. Bussey), 5 P. D., 63.

(a) Contra, if injured while under arrest after capture from desertion.

A soldier who deserted and was arrested therefor and returned to his command, and while en route to his company while so under arrest had his feet frozen, necessitating amputation of both legs, but was afterwards restored to duty without trial, is not entitled to pension for said disability, as it occurred during a period when he was regarded by the War Department as a deserter. *Herman Lamprecht* (Actg. Sec. Bell), 4 P. D. (o. s.), 320.

5. Desertion from first, with discharge from second, service.

Desertion from a service prior to service during the war of 1812, from which the soldier was honorably discharged, is no bar to pension on account of the latter service. *James Barnes* (Actg. Sec. Cowen), 2 P. D. (o. s.), 442.

Where party was pensioned for disability contracted in the service, and it was discovered that he was a deserter from a prior service, pension was suspended upon the ground that his injury was not contracted in the line of duty, he being a

5. Desertion from first, with discharge from second, service—
Continued.

deserter: *Held*, That faithful subsequent service condoned desertion from prior service; that the pension laws are beneficial in character, and their interpretation should be broad and liberal, and that suspension should be removed. *James H. Brush, alias Jesse L. Judd* (Sec. Schurz), 7 P. D. (o. s.), 73.

Where a charge of desertion from the service in the war with Mexico remains on the record of the War Department against a soldier who enlisted in the service in the war for the Union, and therein incurred pensionable disabilities in the line of duty, and thereafter was formally discharged from the service, it is held that the old record of desertion can not be interposed to deny him pension for disabilities incurred by reason of the latter service. Reenlistment, without objection on the part of the Government, and faithful service neutralized and condoned the old offense. *Jacob Bowersmith* (Asst. Sec. Bussey), 3 P. D., 303.

Claimant while a deserter from the Eighty-seventh New York Volunteers enlisted in the First Vermont Cavalry, and was mustered out of the latter organization at the close of the war. He was never discharged from the Eighty-seventh New York, and the War Department refuses to recognize the legality of his second enlistment or any claim for service thereunder, but holds that the law holds him as in a continuous state of desertion during the whole period of enlistment: *Held*, That the fact of desertion can not be used to debar claimant from pension for disabilities subsequently incurred in the line of duty, soldier having returned to and been discharged from the service. Citing *James H. Brush*, 7 P. D., (o. s.), 73. *De Witt C. Falkenburg* (Asst. Sec. Bussey), 3 P. D., 336.

Overruled (Asst. Sec. Reynolds), 7 P. D., 218.

A formal discharge from an enlistment subsequent to claimant's desertion terminates the status of desertion and places the soldier, regardless of the record, in the attitude of an eligible claimant for invalid pension. *John Van Fossen* (Asst. Sec. Bussey), 3 P. D., 347.

Overruled (Asst. Sec. Reynolds), 7 P. D., 218.

Claimant while a deserter from the Thirty-second Indiana regiment enlisted in the One hundred and forty-sixth, from which he was discharged in 1865, and has never been discharged from his first enlistment: *Held*, That soldier's readmission to the service under his last enlistment, though charged with desertion, without trial or punishment, constructively pardoned or condoned said offense, and that the charge of

5. Desertion from first, with discharge from second, service—
Continued.

desertion from his former service was no bar to pension. *Frank Wempe* (Asst. Sec. Bussey), 5 P. D., 339.

Overruled (Asst. Sec. Reynolds), 7 P. D., 218.

Where the claimant deserted from his first service and enlisted in another and different organization, and the War Department refuses to remove the charge of desertion or recognize the legality of the second service, but holds him to be in a continuous state of desertion, it is held that the War Department has exclusive jurisdiction over issues as to such desertion, the correction of its own records, and legality of the soldier's service; and until the said charge is removed by the War Department the claimant has no pensionable status. The act of March 2, 1889, was passed at a time when the rulings of this Department recognized those soldiers coming within the class embraced in this decision as in a continuous state of desertion and as having no pensionable status, and it is presumed that Congress never intended a general removal of the charge of desertion in cases like the present, but simply indicated the cases in which, under certain circumstances, the charge could be removed and the record changed or corrected on application to the War Department. *De Witt C. Falkenburg* (3 P. D., 336), *John Van Fossen* (3 P. D., 347), *Alfred C. Taft* (5 P. D., 110), *Frank Wempe* (5 P. D., 339), and like cases overruled. *Joseph C. Williams* (Asst. Sec. Reynolds), 7 P. D., 218.

Claimant having obtained the removal of the charge of desertion, and an honorable discharge from both services having been granted him through the War Department, the former decision is overruled, the rejection reversed, and the papers are returned for adjudication of the claim on its merits. *Ibid.*

(a) **Contra: Such desertion bars pension.**

Claimant having enlisted in the organization in which he alleges he contracted his disability, in violation of the fiftieth article of war, being a deserter from another organization at the time, he was acting in violation of law, and his disability is not regarded as having been contracted in the line of duty. *Alexander Butts* (Sec. Schurz), 6 P. D. (o. s.), 205.

This Department will not take jurisdiction for pensionable purposes in cases where a soldier enlisted in violation of the twenty-second article of war until the charge of desertion is removed in the manner provided by law. *Margaret A. Taylor* (Asst. Sec. Hawkins), 1 P. D., 42.

6. Widow of deserter at large is not pensionable.

Where a soldier deserted and afterwards was mustered into another service as a substitute, it is held he remained a deserter until his death, and his widow is not pensionable. *Widow of John Smart* (Asst. Sec. Otto), 5 L. B. P., 180.

Desertion of a soldier is a bar to his widow's claim for pension, as, under sections 4709 and 4710, Revised Statutes, no right accrues to him prior to his discharge, and having never been discharged, no right whatever could accrue to him; accordingly none to his widow under section 4702, Revised Statutes. *Widow of Frank W. Porter* (Sec. Schurz), 5 P. D. (o. s.), 146.

Under act of March 9, 1878, record that claimant deserted is a bar to pension to widow, and allowance of bounty land under act of September 28, 1850, to a soldier who is borne as a deserter is erroneous. *Widow of Josiah Ellis* (Sec. Schurz), 6 P. D. (o. s.), 427.

The widow of a soldier of the war of 1812 is not pensionable if he is marked on the rolls a deserter, although he obtained a bounty-land warrant for such service, it appearing that the record of desertion was not reported in the bounty-land claim. *Widow of Albert Wilson* (Sec. Kirkwood), 8 P. D. (o. s.), 184.

(a) Except under act of June 27, 1890.

The widow of a soldier who died in the status of a deserter is not pensionable under section 4702, Revised Statutes, although he was honorably discharged from a service prior to the one from which he deserted, but she is pensionable under the act of June 27, 1890. *Widow of Augustus F. Gresham* (Asst. Sec. Bussey), 6 P. D., 84.

See *James W. Miller*, 2 (a), ante.

7. Removal of charge of desertion.

If a record of desertion is erroneous, evidence to establish that fact should be filed with the War Department, which alone has the power of correction, as this Department can not go behind the records of that Department in such cases. *Widow of Ebenezer F. Woodworth* (Sec. Teller), 13 P. D. (o. s.), 452.

Where a special act, in its first section, removed an existing charge of desertion against the soldier, and in its second section authorized the Secretary of the Interior to place said soldier's name on the pension roll, the Department concurred in the holding of the Pension Office that the first section has no bearing upon the right of the applicant to pension other than in connection with the second section, and does not enable the allowance of the soldier's general-law claim, which stood

7. Removal of charge of desertion—Continued.

rejected on the ground of desertion. *Daniel McAlpin* (Asst. Sec. Jenks), 17 P. D. (o. s.), 386.

See also APPEALS; BOUNTY-LAND; COMMENCEMENT; DISCHARGE; FURLOUGH; LINE OF DUTY; RESTORATION (Commencement).

DIANA.

See WAR VESSELS.

DIFFICULTY AND TROUBLE.

See FEE.

DILIGENCE.

See ATTORNEYS.

DIME.

See WAR VESSELS.

DISABILITIES.

1. Are pensionable whether due to disease or injury.
2. Must appreciably incapacitate for manual labor.
 - (a) *Must be capable of detection by examining surgeons.*
 - (b) *Continuance in a pensionable degree from discharge must be shown.*
 - (c) *Degree is determinable from the evidence on file.*
 - (d) *Question of disability is determinable by the medical referee.*
3. Permanent specific—defined and construed.
4. Nonspecific.
5. Equivalent.
6. Total—Term "totally disabled in the same" construed.
 - (a) *"Total disability" of soldier construed.*
7. Under act of June 27, 1890, and under general law.
 - (a) *Incurrence of disability in Confederate service.*
 - (b) *As to permanency.*
 - (c) *Senility.*
8. Manual labor defined.

1. Are pensionable whether due to disease or injury.

Disabilities are pensionable under the act of March 3, 1873, or June 18, 1874, whether due to injuries or diseases. *Henry Schmidt* (Sec. Chandler), 3 P. D. (o. s.), 158.

2. Must appreciably incapacitate for manual labor.

It is the disability, and not the wound or disease causing the disability, which entitles to pension, and a disability must be shown. *Elizabeth McCluney* (Sec. Delano), 1 P. D. (o. s.), 84.

2. Must appreciably incapacitate for manual labor—Continued.

It appearing that the disability on account of which the claim was made does not incapacitate the claimant from obtaining his subsistence by manual labor, it is not pensionable. *Sheridan B. Smith* (Sec. Delano), 2 P. D. (o. s.), 289.

Although the applicant may actually perform as much labor as a person free from any disabling cause whatever, if, in performing work, he labors under a disadvantage in consequence of a disability received in line of duty in the service, he is entitled to a pension. *Peter Abare* (Sec. Schurz), 4 P. D. (o. s.), 138.

(a) Must be capable of detection by examining surgeons.

Disability, to be pensionable, must be of such a character and exist to such a degree that it can be detected by the examining surgeon of the office. *Durin H. Williams* (Sec. Schurz), 4 P. D. (o. s.), 294.

Where claimant bases application for pension upon disease, and reports of examining surgeons show that the same has caused no disability for manual labor, claim was properly rejected. *Alvin O. Thayer* (Sec. Schurz), 6 P. D. (o. s.), 498.

Disability from disease or from injury to be pensionable must be of such a character and exist to such a degree that it can be detected by the examining surgeon or by the board of surgeons of the Pension Office. *Lemuel R. Scott* (Asst. Sec. Hawkins), 1 P. D., 77; *John Blair* (Asst. Sec. Hawkins), 2 P. D., 183.

A claim for pension on account of disease of lungs will not be allowed where the examining surgeons who examine claimant certify that his lungs are perfectly sound. *George C. Cowden* (Asst. Sec. Hawkins), 1 P. D., 83.

The Department relies upon the certificates of examining surgeons in estimating the degree of disability found to exist. *Wilson G. Gray* (Asst. Sec. Hawkins), 1 P. D., 120.

The fact that claimant is not rated for any disability as a result of sunstroke shows he is not entitled to pension even though incurrence is proved. Citing *Leonard Nerreter*, 1 P. D., 67; *Daniel Bower*, ib., 257. *Levi Reeves* (Asst. Sec. Hawkins), 2 P. D., 177.

To entitle a claimant to pension, his disabilities must be such as to enable the examining surgeons to discover them. Citing *Daniel Bower*, 1 P. D., 257; *Lemuel R. Scott*, ib., 67. *Albert T. Chapin* (Asst. Sec. Hawkins), 2 P. D., 254.

(b) Continuance in pensionable degree from discharge must be shown.

Although the disability alleged is shown to have existed in the service, pension must be denied when claimant fails to prove

2. Must appreciably incapacitate for manual labor—Continued.

- (b) Continuanee in pensionable degree from discharge must be shown—Continued.

the disability has existed in a pensionable degree since discharge. *Ezra Bailey* (Asst. Sec. Hawkins), 1 P. D., 130.

Mere incurrance of disability in service and line of duty is not sufficient upon which to allow pension, but the disability must be shown to have existed in a pensionable degree from date of discharge. *Leonhart Miller* (Asst. Sec. Hawkins), 2 P. D., 142.

- (c) Degree is determinable from the evidence on file.

The degree of disability is determinable by the evidence on file, and where a rating is in accordance therewith it will not be disturbed on appeal. *David Paine* (Asst. Sec. Bussey), 4 P. D., 278.

- (d) Question of disability is determinable by medical referee.

The formally expressed opinion of the medical referee generally controls where the issue involves a medical question, as in a case where the question is whether a pensionable disability exists from alleged causes. *Francis N. Barnard* (Asst. Sec. Hawkins), 2 P. D., 244.

3. Permanent specific—defined and construed.

The word "specific" as used in section 4698½, Revised Statutes, is always considered to mean any disability for which a specific rate of pension is provided by the pension laws. *Michael Kelly* (Actg. Sec. Cowen), 3 P. D. (o. s.), 9.

Examining surgeons are not authorized to determine whether any given disability is "permanent, specific" within the meaning of section 4698½, Revised Statutes. They may determine its permanency, but the question whether it is specific is for the Department to determine. A specific disability is defined to be one specified or particularly mentioned in the statutes, and for which certain fixed rates are established therein, and the word "permanent," used in said section, is superfluous. *George E. Kent* (Sec. Chandler), 3 P. D. (o. s.), 429.

A "specific disability," within the meaning of section 4698½, Revised Statutes, is a disability which is particularly mentioned in the law, and for which a specific rate of pension is provided. *William Hultz* (Sec. Schurz), 6 P. D. (o. s.), 462.

A permanent specific disability is one which is specifically described in the law; such as the loss of a hand or foot. *James Harris* (Sec. Teller), 9 P. D. (o. s.), 324.

"Specific" disability is such as is specified in the statutes. Injuries requiring a medical examination to ascertain and declare their nature, and as to the effect of which there is room

3. Permanent specific—defined and construed—Continued.

for a difference of opinion, are not specific disabilities. *Henry Howard* (Atty. Gen. Devens), 16 Op., 331.

Loss of a finger is not a "permanent specific disability," within the meaning of section 4698½, Revised Statutes. *Daniel Lauback* (Asst. Sec. Hawkins), 1 P. D., 318.

The rating for permanent specific disabilities is fixed by the law providing pension for such disabilities, as well as the date at which the payment shall begin. What constitutes a permanent specific disability is likewise fixed and defined by the law, the evidence in each individual case being the means for determining whether the definition of the law is met in that case. *Batchelor E. Beachman* (Asst. Sec. Reynolds), 7 P. D., 249.

A permanent specific disability within the purview of section 4698½, Revised Statutes, is one which is due to wound, injury, or disease contracted in the military or naval service of the United States, and in line of duty, and which is unchanging in character, and which, when once established, does not require subsequent medical examination to determine its existence, and is particularly enumerated or classified, and for which a fixed and definite rate of pension is named in the law; as the loss of a hand, foot, arm, or leg. *William H. Parker* (Asst. Sec. Reynolds), 8 P. D., 198.

4. Nonspecific.

Incapacity to perform manual labor is a "nonspecific" disability, and any claim for increase on account of such disability is subject to section 4698½, Revised Statutes. *Christian Miller* (Asst. Sec. Bussey), 4 P. D., 351.

5. Equivalent.

The question as to whether a disability is equivalent to the loss of a hand or foot is a medical one, but whether pension shall be increased under the act of August 4, 1886, is purely a legal question. *Allen Cook* (Asst. Sec. Hawkins), 1 P. D., 365.

In applying the act of March 3, 1883, wherein occurs the language, viz, "Or *otherwise* so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or foot," it is held that the word "*otherwise*" in said act refers to any and all disabilities *other than* the loss of a hand or a foot, or total and permanent disability in the same. *Martin V. B. Richardson* (Asst. Sec. Hawkins), 1 P. D., 373.

The act of August 4, 1886, makes no provision for equivalent disabilities, nor any pension for rheumatism, unless such disability or rheumatism result in a total disability of hand, foot, arm, or leg. *Charles A. Beckert* (Asst. Sec. Hawkins), 2 P. D., 224.

6. Total—Term “totally disabled in the same” construed.

The ruling of the Commissioner of Pensions of April 22, 1889, in the case of John Nebb, that whenever a disability exists by reason of wound, injury, or disease in any part of the affected members, in a degree sufficient to render that member useless in the performance of ordinary manual labor, total disability of arm or leg will be assumed to exist, is hereby rescinded. *Andrew M. Luke* (Asst. Sec. Bussey), 3 P. D., 298.

The words “totally disabled in the same,” used in the act of August 4, 1886, are construed to mean such a disability as renders the limb or member of no practical use or convenience—a disability as great as if the limb had been actually amputated. *Christian Miller* (Asst. Sec. Bussey), 4 P. D., 351.

The Department reaffirms the rule in the case of Andrew Luke (3 P. D., 298), construing the expression “totally disabled in the same” in said act to mean a disability of the limb, not for ordinary manual labor merely, but a total disability for all practical use and convenience. Such disability is shown in this case, and entitles to \$36 per month. *William Cline* (Asst. Sec. Reynolds), 7 P. D., 119.

(a) “Total disability” of soldier construed.

A soldier or sailor is deemed totally disabled for performing the duties of a soldier or sailor when his disability, due to his military or naval service, incurred or received in line of duty, is equal to an anchylosed ankle or wrist, or other equivalent disability which would incapacitate him for the performance of active duties of a soldier or sailor. *Sarah J. Paynter* (Asst. Sec. Reynolds), 8 P. D., 16.

7. Under act of June 27, 1890, and under general law.

Disabilities entitle to pension under section 2 of the act of June 27, 1890, only in case they produce an inability to earn a support; and the fact that a disability may be ratable under the general law does not show a ratable condition under said act. *Washington Borden* (Asst. Sec. Bussey), 6 P. D., 17.

The basis of pension under sections 4692 and 4693, Revised Statutes, is disability by reason of wound, injury, or disease contracted while in the service and in line of duty. The basis of pension under section 2, act of June 27, 1890, is incapacity, due to any permanent mental or physical disability not the result of vicious habits, to such a degree as renders claimant unable to earn a support by manual labor. Disabilities incurred while in the service and in the line of duty, and incapacity for earning a support befalling a claimant for pension after his service had ceased, are placed by the pension laws on an entirely different footing. Disability incurred during service and in

7. Under act of June 27, 1890, and under general law—Cont'd.

line of duty is pensionable without regard to capacity to earn a support, and is rated under the provisions of the Revised Statutes without reference to this condition. Disability resulting from causes other than those of service origin is pensionable only under the provisions of the second section of the act of June 27, 1890, when incapacity to labor joins with incapacity to earn a support, and the grades of rating thereunder are dependent upon these two conditions. *Charles T. Bennett* (Asst. Sec. Reynolds), 7 P. D., 1.

As to disability basis, the general law has reference only to incapacity for performance of manual labor, while the act of June 27, 1890, considers only the effect of such incapacity upon the ability "to earn a support." *Francis Keenan* (Asst. Sec. Reynolds), 7 P. D., 52.

Where it is shown that a claimant for invalid pension under the act of June 27, 1890, is prevented from following his trade as a bricklayer by reason of double vision, and because of his advanced age it is not probable he could earn a support by any other occupation, the provisions of said act may properly be held to apply. The reasonable and just interpretation of said act is not whether, by chance or charity, the soldier can find some means of supplying the necessities of life, but whether he is disabled in a degree preventing him from following his trade or some kindred occupation which might yield him a support. *Charles Stone* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Incurrence of disability in Confederate service.

Inability to earn a support by manual labor due to a disability incurred while serving in the Confederate army confers no title to pension under the act of June 27, 1890. *Job White* (Asst. Sec. Reynolds), 7 P. D., 312.

(b) As to permanency.

Where there is a reasonable probability that the disability existing at the date of examination will decrease with the lapse of time, or where it is susceptible of amelioration by means easily within the claimant's reach, it can not be regarded as permanent within the act of June 27, 1890. *Henry Kirkhoff* (Asst. Sec. Reynolds), 8 P. D., 14.

(c) Senility.

Senility is a pensionable disability under the act of June 27, 1890, if productive of inability to earn a support. *Patrick Carroll* (Asst. Sec. Bussey), 6 P. D., 259.

The evidence and medical examination of March 2, 1892, do not show any great amount of disability from disease, although

7. Under act of June 27, 1890, and under general law—Cont'd.**(c) Senility—Continued.**

claimant was suffering to some extent from impaired sight and the effects of catarrh and scurvy, but taking into consideration his extreme age, 68 years, in connection with such disability from disease as he has, it is held that a ratable degree of inability to earn a support by manual labor is shown, and the action is reversed. *Joseph Hayden* (Asst. Sec. Reynolds), 7 P. D., 332.

See also DECLARATIONS (Under act of June 27, 1890).

8. Manual labor defined.

Manual labor, within the meaning of the pension laws, does not mean labor with the hands merely, but labor performed with bodily exertion or muscular effort, and the man who can perform the duties of county surveyor is not wholly unable to perform manual labor. *Redney F. McDonald* (Asst. Sec. Reynolds), 8 P. D., —.

See also AMPUTATIONS; BLINDNESS; CERTIFICATES; COMMENCEMENT; CONTRIBUTORY NEGLIGENCE; EVIDENCE; INCREASE; ORIGIN; RATING; RERATING; TITLE; VICIOUS HABITS.

DISBANDMENT.

See DISCHARGE.

DISBARMENT.

See ATTORNEYS; EVIDENCE (Affidavits).

DISCHARGE.**1. Classes.****2. Is essential to pensionable status.****3. What is not a discharge.****4. Honorable—generally.**

- (a) *Under act of January 29, 1887.*
- (b) *Under act of June 27, 1890.*
- (c) *What is not an honorable discharge.*
- (d) *Death in service not an honorable discharge.*
- (e) *Contra; is equivalent to honorable discharge.*

5. Dishonorable.

- (a) *Is no bar to pension.*
- (b) *Is a bar.*
- (c) *From service during the war of the rebellion.*
- (d) *From service subsequent to the war of the rebellion.*

6. Dismissal from service.**7. Evidence.****8. Date of.**

- (a) *For pensionable purposes under section 4701, Revised Statutes.*

9. Discharge for promotion.

1. Classes.

There are three classes of discharges recognized by the War Department, viz: First, honorable; second, dishonorable; and third, discharge without honor. *George W. Fleck* (Asst. Sec. Reynolds), 7 P. D., 343.

2. Is essential to a pensionable status.

A discharge from the service is a prerequisite to pension, but the nature or the character of the discharge itself does not impair nor otherwise affect the claim for pension on account of disabilities due to the service. *Daniel B. Kaufman* (Asst. Sec. Bussey), 3 P. D., 137.

See *Widow of John Ward*, title DESERTION; *Anne E. Bassett* (Subtitle 5).

A final discharge from service in the war of the rebellion is prerequisite to pension under sections 4692 and 4693, Revised Statutes. *Charles H. Eding* (Asst. Sec. Bussey), 5 P. D., 234.

See *James W. Miller*, DESERTION 2 (a).

3. What is not a discharge.

Where a soldier served during the late war, was commissioned an officer prior to its close, and was subsequently placed on the retired list of the Army, where he remained until his death, it is held his widow is not pensionable under the act of June 27, 1890, as he was never discharged from the service. *Communication to Hon. John S. Cutting* (Asst. Sec. Bussey), 6 P. D., 29.

An order issued April 11, 1861, by the Adjutant-General of the Army, to the effect that this claimant "having declined the command of his company when ordered on a particular service, the President directs that he cease to be an officer of the Army from this date" is not a discharge from the officer's service in the Mexican war, and does not affect his title to pension under the act of January 29, 1887. *William B. Johns* (Asst. Sec. Hawkins), 2 P. D., 393.

Submitted to the Attorney-General and adopted by him February 27, 1889, as expressive of his views.

4. Honorable—generally.

Discharge on account of having furnished a substitute is an honorable discharge. *Celinda A. Parker* (Sec. Schurz), 5 P. D. (o. s.), 347.

The words "honorably discharged" must be taken not in contradistinction altogether to dishonorable discharge, but as meaning a regular and legal discharge from service, such as is accorded to those who have been duly and regularly enlisted. *Widow of Pierre M. Kennerly* (Asst. Sec. Hawkins), 2 P. D., 265.

4. Honorable—generally—Continued.

A discharge from the service of the United States on a writ of habeas corpus on the ground of soldier's minority is an honorable discharge. *Charles T. Loomis* (Asst. Sec. Bussey), 5 P. D., 35.

(a) Under act of January 29, 1887.

The ending of the Mexican war operated as an honorable discharge from the particular service of those of the Regular Army or Navy who were engaged in that war, so as to entitle such persons to pension under the act of January 29, 1887, if otherwise conditioned as provided in said act. Citing and following U. S. r. North, 112 U. S., 510. *William B. Johns* (Asst. Sec. Hawkins), 2 P. D., 293.

Decision submitted to the Attorney-General and adopted by him February 27, 1889, as expressive of his views.

It should be presumed from the facts that this officer received under the act of July 19, 1848, extra pay for his services in the Mexican war, that he was brevetted for gallant and meritorious conduct in said war, and that he received in 1850 a bounty-land warrant for services in the Florida war of 1836, that he was honorably discharged from his service in the Mexican war. *Ibid.*

(b) Under act of June 27, 1890.

In order to be pensionable under the act of June 27, 1890, a soldier must be finally discharged from all service rendered, and such discharge must be "honorable." *Communication* (Asst. Sec. Bussey), 4 P. D., 225.

The Department in construing the act of June 27, 1890, holds that it was clearly intended that the term "honorable discharged" should designate the final separation from the military service by a formal release therefrom and certification of the fact by the superior officers of the soldier. *Susan Colgin, widow* (Asst. Sec. Bussey), 5 P. D., 127.

Overruled in part in *James W. Miller*, DESERTION, 2 (a).

The claimant's husband being in the regular naval service from 1836 until 1873, it is held he was honorably discharged from service during the war of the rebellion when he was separated from that service by lawful authority, within the meaning of the act of June 27, 1890, and his widow is pensionable accordingly under said act. Citing *Moses Blair*; letter December 23, 1892. *Widow of Henry P. Leslie* (Asst. Sec. Bussey), 6 P. D., 255.

An officer in the Regular Navy who is in service continuously during and subsequent to the war of the rebellion is

4. **Honorable**—Continued.(b) **Under act of June 27, 1890**—Continued.

honorably discharged from service in said war, within the meaning of the act of June 27, 1890, when taken away from such service by proper authority. Citing William B. Johns, 2 P. D., 393. *Widow of Hamilton M. Tallman* (Asst. Sec. Bussey), 6 P. D., 261.

Claimant's husband was not finally honorably discharged from the service of the United States during the war of the rebellion, and she is not pensionable under the act of June 27, 1890. *Kate Eibel* (Asst. Sec. Reynolds), 7 P. D., 179.

(c) **What is not an honorable discharge.**

It is not an honorable discharge where soldier was surrendered to civil authorities and sent to State prison. *Alexus Tender* (Sec. Schurz), 4 P. D. (o. s.), 155.

Discharge on account of having furnished a substitute is not such an honorable discharge as is contemplated by the law. *Azel Abel* (Sec. Schurz), 4 P. D. (o. s.), 350.

Overruled in *Celinda A. Parker* (Sec. Schurz), 5 P. D. (o. s.), 347.

Where soldier was mustered out of service as a mutineer pursuant to special order, he can not be said to be "honorably discharged" within the meaning of section 3 of the act of June 27, 1890, and the widow of said soldier is not pensionable under said act. *Maria Nessel (widow)* (Asst. Sec. Reynolds), 7 P. D., 196.

A deserter discharged from confinement and service by the commanding officer of a post in compliance with the instructions of the War Department while he is undergoing punishment pursuant to the sentence of a court-martial is not "honorably discharged" within the provisions of the act of June 27, 1890. *George W. Fleck* (Asst. Sec. Reynolds), 7 P. D., 343.

The twenty-second article of war (Sec. 1342 R. S.) goes to the measure of punishment that may be inflicted upon a mutineer, but does not go to a question of discharge. A mutineer may be discharged under the fourth article of war, and, in the absence of express recitals, such discharge is not equivalent to an honorable discharge; for a discharge may not be technically either honorable or dishonorable. (Op. of Judge Advocate-General dated March 21, 1892.) Case of *George W. Fleck* (7 P. D., 343) reaffirmed. *Margaretha Arendes* (Asst. Sec. Reynolds), 8 P. D., —.

(d) **Death in service not an honorable discharge.**

The mere fact of death in the service is not necessarily an "honorable discharge" from the service; but the honorable discharge mentioned in section 3 of the act of June 27 1890,

4. Honorable—Continued.

- (d) **Death in service not an honorable discharge under act of June 27, 1890—Continued.**

means a discharge granted in conformity with the rules and regulations of either the Army or Navy. *Catharine McCarty* (Asst. Sec. Bussey), 5 P. D., 28.

Death in the service of a soldier is not equivalent to an honorable discharge, within the meaning of the act of June 27, 1890. *Widow of George O. Tripner* (Asst. Sec. Bussey), 6 P. D., 27.

The widow of a soldier who dies in service is not pensionable under the act of June 27, 1890, he not having been honorably discharged from service. Citing *Catharine McCarty*, 5 P. D., 28. *Widow of John Halsey* (Asst. Sec. Bussey), 6 P. D., 281.

Death in the service, as in this case, from delirium tremens, can not be held to be equivalent to an honorable discharge. *Elizabeth J. Halfhill* (Asst. Sec. Reynolds), 8 P. D. —.

- (e) **Contra: Is equivalent to honorable discharge.**

When soldier has served a term of ninety days or more in the military or naval service of the United States during the late war of the rebellion, and has been honorably discharged therefrom, reenlists and dies during his subsequent term of service, his death not being the result of a violation of any law, rule, or regulation of the military or naval service, the requirements of the act of June 27, 1890, as to length of service and honorable discharge are fulfilled, and his widow is entitled to pension on compliance with the other conditions of the act. *Mary E. Walker, widow* (Asst. Sec. Reynolds), 7 P. D., 197.

5. Dishonorable.

Striking from the rolls for fighting a duel is considered by the Secretary of War a dishonorable discharge. *John Rose* (Sec. McClelland), 4 L. B. P., 156.

- (a) **Is no bar to pension.**

While the practice during the past eight years has been to reject a claim for pension if it appeared that the soldier had deserted or had been dishonorably discharged from the term during which the disability is incurred, or where the soldier deserted and it did not appear that he ever returned to duty or was regularly discharged from the service (which practice meets with my approval), yet I am of the opinion that a broader view should be taken, and that the character of the soldier's service should have no bearing whatever upon his right to pension. A dishonorable discharge, therefore, is no bar to

5. Dishonorable—Continued.

(a) Is no bar to pension—Continued.

pension. *Mother of James B. Conroy* (Sec. Delano), 2 P. D. (o. s.), 477.

Overruled in *Daniel B. Kaufman*, 1 P. D., 383.

A dishonorable discharge from service subsequent to the Mexican war has no effect on pensionable rights under the act of January 29, 1887, arising out of service in said war from which the soldier or officer was honorably discharged. *William B. Johns* (Asst. Sec. Hawkins), 2 P. D., 293.

Decision submitted to the Attorney-General and adopted by him February 27, 1889, as expressive of his views.

A dishonorable discharge is a military penalty merely, and does not debar from pension unless expressly made a bar by statute. Citing and affirming *Daniel B. Kaufman*, 3 P. D., 137. *Communication* (Asst. Sec. Bussey), 4 P. D., 225.

A dishonorable discharge from the military service of the United States is no bar to pension on account of a disability due to wound or injury received or disease contracted in the service and line of duty. *Anne E. Bassett* (Asst. Sec. Reynolds), 8 P. D., 321.

The widow of a soldier who died from wounds or injury received or disease contracted in the military service of the United States and in line of duty is pensionable, notwithstanding her husband's discharge from the service was a dishonorable one. *Ibid.*

(b) Contra: Bars pension.

Dishonorable discharge bars pension as well to the soldier's widow as to the soldier himself. Citing *Daniel B. Kaufman*, 1 P. D., 383. *Widow of Henry Woerheide* (Asst. Sec. Hawkins), 2 P. D., 146.

(c) From service during the war of the rebellion.

Appellant having enlisted in an organization for service in the war of the rebellion, and having been dishonorably discharged from such organization, can not be said to have been honorably discharged from his service in said war, and is not pensionable under the second section of the act of June 27, 1890. *Franklin S. Cowen* (Asst. Sec. Reynolds), 7 P. D., 374.

Claimant having been dishonorably discharged from his term of enlistment in Company H, Fortieth Ohio Infantry Volunteers, for service in the war of the rebellion, he has no title to pension under the provisions of section 2 of the act of June 27, 1890, for the reason that he was not honorably discharged from all of the service he contracted to perform during said war. (Cullen's appeal, 6 P. D., 72; Cowen's appeal, 7 P. D., 374.) *George Vansickle* (Asst. Sec. Reynolds), 8 P. D., 336.

5. Dishonorable—Continued.**(d) From service subsequent to the war of the rebellion.**

A dishonorable discharge from service subsequent to the late war of the rebellion is no bar to pension under the act of June 27, 1890, on account of service during the war of the rebellion from which the soldier was honorably discharged, but otherwise if the soldier deserted from the subsequent service and was never discharged therefrom. Citing William B. Johns, 2 P. D., 393. *Stephen H. Carey* (Asst. Sec. Bussey), 6 P. D., 42.

Where soldier served over ninety days in the war of the rebellion and was honorably discharged therefrom, his desertion March 9, 1866, from a subsequent enlistment, July 25, 1865, in the Regular Army, for which desertion he was court-martialed and dishonorably discharged, is no bar to his right to a pension under the act of June 27, 1890, the other conditions of the act being complied with. Cases of *Carey*, 6 P. D., 42, and *Graham*, *ibid.*, 84, cited, followed, and affirmed. *Jeremiah Butler* (Asst. Sec. Reynolds), 7 P. D., 214.

6. Dismissal from service.

An officer tried by court-martial, convicted of desertion, and dishonorably dismissed from the service is not pensionable, even for disability incurred in the service and line of duty. The case of *Jane Conroy* (2 P. D. (o. s.), 477) is distinctly overruled. *Daniel B. Kaufman* (Asst. Sec. Hawkins), 1 P. D., 383.

Overruled: 3 P. D., 137; 7 P. D., 233.

Where a soldier, after acquittal on a trial by a court-martial, was dismissed from the service on recommendation of the major-general commanding the department, who disapproved the verdict of acquittal, such dismissal has no legal effect upon the soldier's claim for or title to pension on account of disabilities incurred in line of duty in service. Citing and following *Daniel B. Kaufman*, 3 P. D., 137; *Jane Conroy*, 2 P. D. (o. s.), 477, reversing prior decision, *ibid.*, 259. *Widow of Frank Backof* (Asst. Sec. Bussey), 4 P. D., 77.

A dishonorable dismissal from service debars from pension under the act of June 27, 1890. Citing *Stephen H. Carey*, 6 P. D., 42. *James Cullen* (Asst. Sec. Bussey), 6 P. D., 72.

7. Evidence.

A paper purporting to be a discharge, with seemingly the requisite intrinsic evidence of genuineness, and in harmony with the history of the times and facts to which it relates, should be admitted as genuine, in the absence of any well-founded suspicion of its character. *Lewis Blankenbaker* (Sec. Usher), 5 L. B. P., 156.

8. Date of

The date to which a soldier is paid should be considered the real date of his discharge, although the discharge was not made out until subsequently. *Gottlieb Stoll* (Actg. Sec. Cowen), 1 P. D. (o. s.), 20.

(a) For pensionable purposes under section 4701, Revised Statutes.

Section 4701, Revised Statutes, limits the legal termination of service in any pension case to one or other of two possible dates only—that is (1), to date of actual discharge for any other cause than expiration of the term of service of the organization; and (2), to the date of disbandment of the organization because of the expiration of the term of service. *George W. Hill* (Asst. Sec. Reynolds), 7 P. D., 235.

9. Discharge for promotion.

The discharge of an enlisted man by reason of his promotion to a higher rank (lieutenant) is not a discharge within the meaning of the act of June 27, 1890; the purpose of said discharge is not to terminate his service, but to retain him in the service in a higher grade, and when such soldier was, after his promotion, dismissed from the service by sentence of a court-martial he can not be held to have been honorably discharged. *Mary, widow of Adam Landfrit* (Asst. Sec. Reynolds), 8 P. D., —.

See also ATTORNEYS; BOUNTY LAND; DESERTION; EVIDENCE; EXAMINATIONS; NURSES; RESTORATION; WITHDRAWAL OF PAPERS.

DISLOYALTY.**1. Laws governing as to, generally.**

(a) *Act of March 3, 1873 (section 23).*

2. Is a bar to pension.**3. Acts held to constitute disloyalty.**

(a) *Enlistment to escape imprisonment.*

(b) *Enlistment to escape conscription.*

4. Acts held not to constitute disloyalty.

(a) *Conscription.*

5. Condonation—subsequent loyal service.

(a) *Amnesty act of 1868.*

(b) *Act of March 3, 1877.*

(c) *Act of August 1, 1892.*

6. Evidence, presumptions, and proof.

(a) *Enlistment in rebel army is presumed to have been voluntary.*

(b) *Burden of proof to overcome presumption is on claimant.*

(c) *Sufficiency of rebuttal evidence.*

(d) *When rebuttal is on ground of duress.*

7. No bar to pension under act of June 27, 1890.

(a) *Contra.*

8. Commissioner's circular of June 10, 1865.**9. As affecting payment.**

1. Laws governing as to, generally.

The question of disloyalty, as affecting bounty-land claims, is governed solely by the joint resolution of March 2, 1867, but as affecting pension claims, by section 4716, Revised Statutes; adhering to former decisions of October 23, 1869, 7 L. B. P., 32, and Irene G. Scarritt, December 5, 1873, 1 P. D. (o. s.), 322. *Instructions* (Sec. Chandler), 3 P. D. (o. s.), 125.

(a) Act of March 3, 1873 (section 23).

Section 23 of the act of March 3, 1873, is applicable alike to those who were on the pension rolls at the date of the passage of said act and to those who might apply thereafter. *Edward T. Maynard* (Actg. Sec. Smith), 2 P. D. (o. s.), 133.

2. Is a bar to pension.

Encouragement of the rebels, or sympathy with their cause, bars claim for pension. *James A. Seucers* (Asst. Sec. Otto), 5 L. B. P., 182.

Section 4716, Revised Statutes, prohibits the payment of any money on account of pension to any person, or to the widow or children or heirs of any deceased person, who in any manner voluntarily engaged in or aided or abetted the late rebellion against the authority of the United States, except in cases where pension is granted on account of disability due to a wound or injury received or disease contracted in the service of the United States under a contract of enlistment entered into subsequent to the time such person was engaged in aiding or abetting the late rebellion, and in certain classes of pensions granted on account of service in wars prior to the war of the rebellion, which are expressly excepted from the operation of said section. *Job White* (Asst. Sec. Reynolds), 7 P. D., 312.

The admissions of this appellant under oath, as well as the other evidence in this case, show that he rendered voluntary service in the Confederate army during the late war of the rebellion, and consequently his title to pension is barred by the provisions of section 4716, Revised Statutes. *Anastasio Capella* (Asst. Sec. Reynolds), 8 P. D., 308.

3. Acts held to constitute disloyalty.

Making clothes and tents for the rebel soldiers was disloyalty which will bar pension. *Penita Hendley* (Sec. Delano), 1 P. D. (o. s.), 327.

Voting for the ordinance of secession in 1861 is an act of disloyalty which bars pension. *Andrew D. Slaughter* (Sec. Delano), 1 P. D. (o. s.), 366.

Payment of taxes to the Confederate government is disloyalty, barring pension under the act of February 14, 1871. *Henry L. Davis* (Actg. Sec. Cowen), 3 P. D. (o. s.), 56.

3. Acts held to constitute disloyalty—Continued.

No conscript act was passed by the rebel congress prior to April, 1862. This claimant's service, therefore, in the rebel army from March 1, 1862, to March, 1863, and his evident attempt by false allegation as to the date of his enlistment to support his plea of involuntary service by reference to the conscript act, warranted a belief that his disloyal service was not involuntarily rendered. *William D. Bowen* (Sec. Chandler), 3 P. D. (o. s.), 242.

Any person exercising the functions of an office (in this case a justice of the peace) under the government of a State in rebellion against the United States was aiding and abetting the rebellion within the meaning of section 4716, Revised Statutes. *Jesse D. Havis* (Actg. Sec. Gorham), 3 P. D. (o. s.), 467.

Under section 4716, Revised Statutes, anyone who gave public expression to sentiments showing sympathy with the rebels aided and abetted the rebellion within the meaning of said section. *Margaret Lemaster* (Sec. Schurz), 4 P. D. (o. s.), 427.

Holding the office of postmaster and performing the duties thereof under the Confederate government was aiding and abetting the rebellion. *John W. McDonald* (Sec. Schurz), 5 P. D. (o. s.), 104.

Presumption of disloyalty is raised by payment of taxes to the Confederate government or furnishing food and clothing to sons in the Confederate army; but such presumption may be rebutted. *Phillip Hoppel* (Sec. Schurz), 5 P. D. (o. s.), 151.

Enlistment and service in the Confederate army is such a voluntary aiding and abetting the rebellion against the authority of the United States as, under section 4716, Revised Statutes, will bar title to pension. *Milo Ousterhout* (Asst. Sec. Reynolds), 7 P. D., 270.

(a) Enlistment to escape imprisonment.

Where a Federal soldier voluntarily enlists in the Confederate service to escape the hardships of prison life, he is barred of his right to pension by the provisions of section 4716, Revised Statutes. *William Hedgspeth* (Asst. Sec. Hawkins), 1 P. D., 245.

Overruled: 4 P. D., 144; 5 P. D., 369. But see *Milo Ousterhout*, 7 P. D., 270.

Where claimant alleges he voluntarily joined the rebel army in order to save his life and escape from prison: *Held*, That section 4716, Revised Statutes, applies, and disabilities incurred during said imprisonment and such service in the army of rebellion are not pensionable. *George Smith* (Asst. Sec. Hawkins), 1 P. D., 303.

3. Acts held to constitute disloyalty—Continued.

(a) Enlistment to escape imprisonment—Continued.

Where a soldier was taken prisoner in July, 1864, returned to the Union lines April 30, 1865, and to his company June 5, 1865, it was held that his enlistment in the Confederate service, made voluntarily in January, 1865, for the purpose of escaping from his imprisonment by the Confederate forces and rejoining his command, was not a voluntary engagement in or aiding and abetting of the rebellion, within the meaning of section 4716, Revised Statutes. Ruling 107 abrogated. *Russel S. Cole* (Asst. Sec. Bussey), 4 P. D., 141.

Soldier, while a prisoner of war in Andersonville, Ga., enlisted in the Confederate army, as he alleges, to escape the barbarities of prison life, and with the intent to escape to the Union lines, and was mustered out of the service with his company: *Held*, That he was completely justified in so doing, and is not barred from pension by section 4716, Revised Statutes; the fact that he received a final discharge from the military service putting him beyond the pale of inquiry by the Secretary of the Interior respecting any military offense that may have been recorded against him prior to his discharge. *John R. McCoy* (Asst. Sec. Bussey), 5 P. D., 369.

Overruled: *Milo Ousterhout*, 7 P. D., 270.

The soldier, while a prisoner of war, enlisted in the Confederate service for the purpose, as alleged, of escaping his prison life; served therein; was captured by the Federal Army; confined in a military prison, and while so confined enlisted in the United States Infantry April, 1865, from which he was mustered out with his command October, 1866: *Held*, The above facts bring this case within the provisions of section 4716, Revised Statutes. Distinguishing this case from *R. S. Cole*, 4 P. D., 141, in that in that case the soldier was, on his return to his regiment, assigned to duty with his command, and was honorably discharged, while in this case the soldier was captured in arms against the United States, was not assigned to duty with his command, nor honorably discharged from that service, but was regarded in all respects as a Confederate prisoner of war. *Edicard Hughes* (Asst. Sec. Bussey), 6 P. D., 82.

Appellant was captured while serving as a soldier in a volunteer regiment in the United States army, and while a prisoner of war enlisted in the Confederate Army and was subsequently captured by the Union forces in arms against the United States. He was never returned to his original command nor mustered out of his first service, but while being held as a rebel prisoner of war enlisted in the Army of the United States in a regiment composed principally of ex-Confederate

3. Acts held to constitute disloyalty—Continued.

(a) Enlistment to escape imprisonment—Continued.

prisoners of war for service on the frontier. He was honorably discharged from the latter service. He claimed pension for disability alleged to have been contracted in rebel prison: *Held*, That under section 4716, Revised Statutes, these facts bar his right to pension, and rejection of his claim for that reason is affirmed. *Ezra R. Reed* (Asst. Sec. Reynolds), 7 P. D., 95.

The fact that a soldier of the United States Army was confined as a prisoner of war in a Confederate military prison is no excuse for enlisting or serving in the Confederate army. The cases of Russel S. Cole, 4 P. D., 141; John R. McCoy, 5 P. D., 369; Charles F. Kibler, No. 492353, and Louis Pereles, No. 571677, are overruled; and the rule followed by Secretaries Usher, Cox, Delano, Chandler, Schurz, Teller, Kirkwood, and Lamar is reestablished, and will govern in adjudicating cases of this character in future. *Milo Ousterhout* (Asst. Sec. Reynolds), 7 P. D., 270.

Claimant, while a prisoner of war at Salisbury, N. C., offered to enlist in the Confederate army, with the avowed purpose of making his escape to the Federal Army, as is shown by the evidence, was never actually enlisted or mustered into said service, but was subsequently paroled, when he returned to the Union Army and served therein until mustered out in May, 1865. Under the circumstances, it is held that it is not shown that he voluntarily aided and abetted the late rebellion against the authority of the United States, and his case does not come within the prohibition of section 4716, Revised Statutes. *George L. Henry* (Asst. Sec. Reynolds), 8 P. D., —.

(b) Enlistment to escape conscription.

Service was rendered in Company B, Fifty-eighth North Carolina Partisan Rangers, in 1862, a local company, in order to escape conscription in the Confederate army: *Held*, To be a disloyal act, and a bar to pension under section 4716, Revised Statutes. *William R. Stewart* (Asst. Sec. Joslyn), 15 P. D. (o. s.), 228.

4. Acts held not to constitute disloyalty.

Where a soldier's widow, believing she was applying for a Federal pension, signed a petition to the so-called Confederate government asking for payment of her pension, such was not an act of disloyalty barring her right to pension, as there was evidently no disloyalty intended. *Widow of Richard B. Screren* (Actg. Sec. Smith), 1 P. D. (o. s.), 185.

4. Acts held not to constitute disloyalty—Continued.

The fact that a pensioner, payment of whose pension had ceased by reason of residence in rebellious States, signed a petition to the rebel secretary of war for a renewal of his pension by the Confederate authority, does not bar his claim for restoration to the pension roll. *James Dunning* (Sec. Delano), 1 P. D. (o. s.), 325.

Sympathizing with the late rebellion without either by word or deed manifesting sympathy in such manner as to give encouragement to the rebels, is no bar, under section 4716, Revised Statutes, to pension on account of service in the war of 1812. *Jeremiah Anslie* (Sec. Schurz), 4 P. D. (o. s.), 363.

The fact that this soldier was court-martialed, tried, and convicted of conduct prejudicial to good order and military discipline in publicly, in the presence of his comrades, speaking of the assassination of President Lincoln, on the receipt of the news thereof, as "A damned small loss," does not bar him, under section 4716, Revised Statutes, from pension, as it can not properly be held that in the matter for which he was tried and convicted he aided and abetted the rebellion. *William Dinan* (Sec. Teller), 10 P. D. (o. s.), 344.

A pensioner residing in an insurrectionary State, who did not take up arms against the United States or give encouragement to the rebellion, is entitled, upon the termination of the hostile relation, to be paid the pension money due him from the time the rebellion began. *Atty. Gen. Speed*, 11 Op., 412.

Soldier was reported deserted October 17, 1862; captured by General Forrest October 7, 1862; returned to his command in November, 1862; was placed on duty, subsequently promoted, and was honorably discharged June 25, 1865. The prisoner of war records reported him paroled September 7, 1862, and that he renounced his allegiance to the United States, and took the oath of allegiance to the Confederate States, October 15, 1862: *Held*, That in view of the discrepancy in the record and soldier's subsequent conduct and his reputation for loyalty, the rejection of his widow's claim on the ground of disloyalty was not warranted. *Sarah C. Hutsell* (Asst. Sec. Bussey), 5 P. D., 58.

(a) Conscription.

Compulsory service, under the conscription laws of the Confederacy, in the rebel service, from which the soldier deserted at his first opportunity and joined the Federal service, in which he was killed, does not forfeit his mother's right

4. Acts held not to constitute disloyalty—Continued.

(a) Conscription—Continued.

to pension. *Mother of Frederick Thatcher* (Actg. Sec. Otto), 7 L. B. P., 119.

A claimant who was conscripted into the Confederate army may or may not have rendered voluntary service, and where from the record it appears that any service rendered was not voluntary, but wholly compulsory, he is excepted from the operation of section 4716, Revised Statutes. *Augustus H. Longee* (Asst. Sec. Reynolds), 7 P. D., 586.

Involuntary service in the Confederate army by a conscript does not bring a claimant for pension within the provisions of section 4716, Revised Statutes. Appellant was 22 years old when he entered the Confederate service. The age limit of the conscription law of the Confederacy of April 1, 1862, was from 18 to 35 years; that of September, 1862, 18 to 45 years, and of the law of February, 1864, from 17 to 50 years, and the appellant was subject to conscription, as alleged and shown. *Isaac N. Babb, alias John Dunlap* (Asst. Sec. Reynolds), 8 P. D., 59.

5. Condonation—subsequent loyal service.

Disloyalty can not be condoned by subsequent loyal service, but bars pension on account of disability incurred in the latter service. *Charles W. Erdman* (Sec. Delano), 2 P. D. (o. s.), 37.

(a) Amnesty act of 1868.

The "Amnesty" act of 1868, removing certain political disabilities imposed on certain persons by the fourteenth amendment to the Constitution, does not affect section 4716, Revised Statutes, so as to restore to a pensionable status persons made by said section nonpensionable. Adhering to former decision herein, 8 P. D. (o. s.), 398. *Edvard Canticell* (Asst. Sec. Bussey), 4 P. D., 255.

(b) Act of March 3, 1877.

A claimant for pension on account of disability incurred while serving in the United States Navy, having previously aided and abetted the enemies of the United States, is barred by section 4716, Revised Statutes; the act of March 3, 1877, excepting persons enlisting in the Army from the operation of said section, not applying to the Navy. *Salathiel Dennison* (Actg. Sec. Joslyn), 15 P. D. (o. s.), 71.

(c) Act of August 1, 1892.

The act of August 1, 1892, is not retroactive, and a widow has no right to have sailor's claim reopened under said act when said sailor died before the passage of the act. *Andrew J. Pussons* (Asst. Sec. Reynolds), 8 P. D., —.

6. Evidence, presumptions, and proof.

Disloyalty of widow of soldier, as shown by her admission in connection with the fact that a special act was passed by Congress in behalf of the minors on account of disloyalty of mother, is sufficient ground for the rejection of her claim. *Hannah E. Oliver* (Sec. Schurz), 6 P. D. (o. s.), 171.

The test of a person's right to have his claim allowed should not be acts done by him under duress nor under circumstances beyond his control, but he should be allowed to show in connection with such acts the facts and circumstances under which they were performed, and that, while such acts were done by him, his motives and feelings were not therein truly represented. Quoting Phillip Hoppel (bounty-land claim), 5 P. D., (o. s.), 151. *Reuben Lightner* (Sec. Teller), 13 P. D. (o. s.), 327.

(a) Enlistment in rebel army is presumed to have been voluntary.

It must be presumed that those who enlisted in the rebel army did so voluntarily, and that such enlistment was not voluntary must be distinctly and affirmatively shown. *Joseph S. Hurst* (Sec. Teller), 13 P. D. (o. s.), 292.

Enlistment in the Confederate army will be presumed to be voluntary. *Milo Ousterhout* (Asst. Sec. Reynolds), 7 P. D., 270.

Where there is a record of service in the Confederate army, whether by conscription or otherwise, such record failing to show whether such service was voluntary or involuntary, it will be presumed that service was voluntary, but such presumption may be rebutted. *Augustus H. Longee* (Asst. Sec. Reynolds), 7 P. D., 586.

The records of the War Department show that claimant, a citizen of Iron County, Mo., was captured December 3, 1864, and confined at Alton, Ill., until March 16, 1865, when, with other Confederate prisoners, he enlisted in the United States Army: *Held*, That such record raises the presumption that claimant voluntarily engaged in, aided, or abetted the late rebellion against the authority of the United States, and the burden of proof is upon him to show the contrary. (*Augustus H. Longee*, 7 P. D., 586.) *William C. Couch* (Asst. Sec. Reynolds), 8 P. D., 39.

The presumption from the fact that a soldier, while in rebel prison, enlisted in the rebel army, is that he voluntarily aided and abetted the rebellion. But this presumption may be set aside by proof that it was his intention, by enlisting, to escape to the Union forces. *James H. Rainey* (Asst. Sec. Reynolds), 8 P. D., 77.

(b) Burden of proof to overcome presumption is on claimant.

Where service in the Confederate army is shown by a claimant's record, the burden of proof is on him to show that such

6. Evidence, presumptions, and proof—Continued.**(b) Burden of proof to overcome presumption is on claimant—Cont'd.**

service was not voluntary. *Augustus H. Longee* (Asst. Sec. Reynolds), 7 P. D., 586.

Where service in the Confederate army is shown by a soldier's or sailor's record, the burden of proof is on his widow claiming pension on account of his service and death to show that such service was not voluntary. Claimant in this case not having satisfactorily shown that her husband's service in the Confederate army was involuntary, her claim was properly rejected under section 4716, Revised Statutes. *Emma H. Seymour* (Asst. Sec. Reynolds), 8 P. D., 325.

(c) Sufficiency of rebuttal evidence.

The sufficiency of the evidence to rebut the presumption of voluntary service in the Confederate army must depend on the circumstances of each particular case. *Augustus H. Longee* (Asst. Sec. Reynolds), 7 P. D., 586.

(d) When rebuttal is on ground of duress.

Where such enlistment and service in the Confederate army is sought to be palliated or excused on the ground of duress, that the same was not voluntary, or that it was for the purpose of escape from imprisonment by the so-called Confederacy, the presumption of voluntarily aiding and abetting the rebellion can only be overcome by the most positive, direct, and satisfactory evidence, and the uncorroborated testimony of a claimant will not be accepted to overcome such presumption. *Milo Ousterhout* (Asst. Sec. Reynolds), 7 P. D., 270.

7. Is no bar to pension under act of June 27, 1890.

The only inquiry on this point that can be properly raised is whether or not, subsequently to his service in the Confederate army, the soldier served ninety days in the Army of the United States and was honorably discharged from said service. *George W. Coffey* (Asst. Sec. Bussey), 4 P. D., 285.

Overruled: *Adolph Bernstein*, 7 P. D., 229.

Disloyalty is no bar to pension under the act of June 27, 1890, on account of service rendered during the war of the rebellion subsequent to such disloyalty. Citing *Henry L. Hayman*, 22 L. B., 57, and overruling decision herein of February 20, 1893. *Daniel B. Garrison* (Asst. Sec. Bussey), 6 P. D., 289.

Overruled: *Adolph Bernstein*, 7 P. D., 229.

(a) Contra.

Section 4716, Revised Statutes, applies as well to pensions granted under the act of June 27, 1890, as to those granted

7. Is no bar to pension under act of June 27, 1890—Cont'd.(a) **Contra**—Continued.

under sections 4692, 4693, 4702, 4705, and 4707, Revised Statutes. *George W. Coffey*, 4 P. D., 285, and *Daniel B. Garrison*, 6 P. D., 289, overruled. *Job White* (Asst. Sec. Reynolds), 7 P. D., 312.

The widow of a soldier or sailor whose husband voluntarily served in the Confederate army or navy, either prior or subsequent to his service in the Army or Navy of the United States, is, by reason of the inhibition of section 4716, Revised Statutes, not entitled to a pension under the act of June 27, 1890. *Sarah H. Osborn* (Asst. Sec. Reynolds), 7 P. D., 317.

Where the record shows that a claimant voluntarily engaged in or aided and abetted the rebellion, his claim, under the act of June 27, 1890, should be rejected under section 4716, Revised Statutes. *Augustus H. Longee* (Asst. Sec. Reynolds), 7 P. D., 586.

8. Commissioner's circular of June 10, 1865.

The Commissioner's circular of June 10, 1865, directing that all pensioners residing in the rebellious States bedropped from the rolls, was not authorized by the act of February 4, 1862, nor by any other law, and was nugatory, and all pensioners who were dropped under said order should be regarded as being pensioners during the whole time payment to them was suspended, except those stricken from the rolls on proof of disloyalty within the meaning of said act; and the widow of a pensioner who, at the time of his death, stood suspended under said order, may, on proof of loyalty, receive the accrued pension due him from the date of last payment to the date of his death. Overruling *Ann B. Johnson*; citing 11 Op. of Attorney-General, 442. *Widow of Fernando Fellanny* (Sec. Delano), 1 P. D. (o. s.), 429.

9. As affecting payment.

Pension money should not be paid to those who were loyal for the benefit of those who were disloyal during the late rebellion; but it may be paid through the hands of those who were disloyal for the benefit of those who were loyal. *Minor of Charles Deas* (Sec. Browning), 6 L. B. P., 209.

See BOUNTY LAND; RESTORATION; SUSPENSION.

DISMISSAL.

See DISCHARGE.

DISPATCH BEARER.

See BOUNTY LAND (Service).

DISPATCH BOAT.

See WAR VESSELS.

DIVERSION OF PENSION.

See ABANDONMENT; ADDITIONAL PENSION.

DIVISION OF PENSION.

See ADDITIONAL PENSION.

DIVORCE.

1. Agreement to separate, not a legal divorce.
2. Decree of dissolution, not one of nullity.
3. Decree to take effect on payment of costs.
4. Evidence of.
5. Divorced wife, status of.

1. **Agreement to separate, not a legal divorce.**

A mutual agreement, duly witnessed, between a husband and wife to separate, and that their marriage relations shall be dissolved, is not a legal divorce from their marriage. *Widow of William Strong* (Asst. Sec. Bussey), 6 P. D., 90.

2. **Decree of dissolution, not one of nullity.**

Where pensioner remarried and subsequently a decree was made that "the marriage is dissolved," and not, as alleged, "to be null and void ab initio:" *Held*, That the proof was not sufficient to declare the marriage null and void, and the action of the office in refusing to restore claimant's name to the roll was proper. *Lydia Dorr* (Sec. Schurz), 4 P. D. (o. s.), 459.

3. **Decree to take effect on payment of costs.**

A decree of divorce which states that said decree is to take effect upon the payment by the plaintiff of all costs of the proceeding is good, though the costs are never paid, said condition injected into the decree in regard to the payment of costs being mere surplusage. *Mary J. Poorbaugh* (Asst. Sec. Reynolds), 8 P. D., 189.

4. **Evidence of**

Other than record evidence of a divorce is admissible; and where a husband (soldier) and wife had separated by consent,

4. Evidence of—Continued.

he leaving with a declared intent of procuring a divorce, and afterwards wrote his and her friends he had procured a divorce; both he and she remarried thereafter, and neither remarriage was questioned during the soldier's lifetime; a divorce, prior to such remarriage, from the soldier's first wife, and the consequent validity of his second marriage, should be presumed. *Widow of John M. Rich* (Asst. Sec. Bussey), 4 P. D., 234.

5. Divorced wife, status of.

A divorced wife has no title to pension on account of the death of her divorced husband. *Mary C. Stacey* (Asst. Sec. Hawkins), 1 P. D., 435.

See also EVIDENCE; FRAUD AND MISTAKE; JURISDICTION; MARRIAGE; REMARRIAGE; TITLE

DOUBLE PENSION.

As determined by the Attorney-General, two pensions at the same time can not be allowed to the same individual; but where a widow was pensioned under one law and has title also to pension under another and prior law, the latter pension may be allowed, deducting payments made to her under the other law. *Catherine Hartshorn* (Sec. Porter), Pension Laws, etc. (1849), 124.

As this pensioner drew double pension without any fraudulent intent, being ignorant that such was not lawful, it is held that, in accordance with the spirit of the pension laws and the circumstances of this case, pension should be continued. *Widow of David and mother of John C. Quigley* (Actg. Sec. Joslyn), 10 P. D. (o. s.), 282.

Rates of pension which should be allowed General Burnett under the general laws of March 3, 1873, June 18, 1874, and June 16, 1880, and under the special act of March 3, 1879, stated; and advised that two pension certificates be issued—one under the general law of June 16, 1880, the other under the special act of March 3, 1879. *Atty. Gen. Brewster*, 17 Op., 401.

Allowance of pension under the act of June 27, 1890, operates to terminate pension under the general law. *Francis Keenan* (Asst. Sec. Reynolds), 7 P. D., 52.

See also ELECTION; REIMBURSEMENT.

DRAFTED MEN.

See SERVICE.

DROPPING FROM ROLLS.

If a pensioner under the act of March 18, 1818, no longer needs the pension for his support, he may at any time be dropped from the roll. *Atty. Gen. Taney*, 2 Op., 502.

Where, in pending claim for increase, evidence is elicited by special investigation that the disability for which pensioned existed prior to enlistment, claim for increase should be rejected and name of pensioner dropped from the rolls. *David Claver* (Sec. Schurz), 6 P. D. (o. s.), 422.

In case where pensioner has disease (such as rheumatism) which may be recurrent in its appearance and where a considerable period may elapse when the symptoms do not appear, it is not proper to drop name from roll, and in the case of an original application the converse of this proposition is true. *Robert P. Walker* (Sec. Schurz), 7 P. D. (o. s.), 286.

See also COMMENCEMENT (Special Act); SUSPENSION.

DROWNING.

See DEATH, CAUSE.

DUPLICATES.

See BOUNTY LAND; CERTIFICATES; FEE.

ELECTION.

1. Generally.
2. Between general law and special act.
 - (a) *Acceptance under special act estops from claiming under general law.*
 - (b) *Such acceptance does not estop.*
 - (c) *But a pensioner under special act may not receive additional pension.*
3. Between general law and act of June 27, 1890.
4. Between invalid and dependent pensions.
5. By a mother, between pensions on account of two sons.
6. Re-election.
7. Waiver.
8. Notice.

1. Generally.

As the act of July 14, 1862, is more liberal in its provisions than the provisions of the law under which this claimant is pensioned, she may surrender her present certificate and receive a new one under the provisions of said act, but may not be allowed two pensions at the same time. *Mother of Daniel R. Stickney* (Sec. Harlan), 6 L. B. P., 20.

2. Between general law and special act.

Where a pensioner was entitled to though not actually receiving a pension of \$50 per month under a general law, and while so entitled a special act was passed giving him another pension: *Held*, That his right under the general law did not cease or become merged in that granted by the special act. *Atty. Gen. Brewster*, 17 Op., 415.

In case there is a special resolution giving a person pension who is also provided for by a general act, he must elect which pension he will take. *Decatur v. Paulding*, 14 Pet., 497; *U. S. v. Teller*, 107 U. S., 64.

(a) Acceptance under special act estops from claiming under general law.

A pensioner under and by virtue of a special act is precluded from pension under the general law, and does not come within the benefits of section 4715, Revised Statutes. Overruling *Charles Lynch*, August 28, 1873. *Edwin E. Tucker* (Asst. Sec. Jenks), 1 P. D., 1.

Overruled: *Ollie M. French*, 3 P. D., 94.

Where the soldier is pensioned under special act of Congress for certain disabilities, he can not surrender his pension under said act and in lieu thereof claim pension for the same disabilities under the general pension laws. *James Long* (Asst. Sec. Hawkins), 1 P. D., 423.

A pensioner under a special act is estopped, by reason of accepting such pension, from further prosecuting a prior claim under the general law. Citing *Alvin Walker*, 1 P. D., 143; *Edwin E. Tucker*, *ibid.*, 1. *Peter Adams* (Asst. Sec. Hawkins), 2 P. D., 46.

Overruled: s. c., 5 P. D., 351.

The right of any pensioner to take one certificate in lieu of another, as provided in section 4715, Revised Statutes, has reference to pensioners under the general law only, and not to the exchange of a pension under a special act for a pension under the general law, in the expectation of pecuniary gain. *Ibid.*

A special act providing the pension thereby allowed shall "be in lieu of all other pensions" excludes the beneficiary from any and all other laws, both as to the pensioned disability and as to all other disabilities. *Newton C. Ridenour* (Asst. Sec. Hawkins), 2 P. D., 348.

(b) Such acceptance does not estop.

A claimant entitled to a pension under each of two different laws may elect under which law he will be pensioned. Overruling *Edwin E. Tucker*, 1 P. D., 1. *Ollie M. French* (Asst. Sec. Bussey), 3 P. D., 94.

2. Between general law and special act—Continued.

(b) Such acceptance does not estop—Continued.

If a claimant who has been pensioned under a special act establishes his claim under the general law, he has the right to surrender his certificate under the special act, and in lieu take such pension as he may show himself entitled to under the general law by reason of the express provisions of section 4715, Revised Statutes. *T. Miller Raub* (Asst. Sec. Bussey), 3 P. D., 206.

A pensioner, under and by reason of a special act of Congress, may prosecute a claim for pension under the general law, and upon proof of same may elect to take the pension provided by the general law or retain that which is provided by the special act. But the pensioner may not hold under the general law and also under a special act at the same time. (Citing and following *Ollie M. French*, 3 P. D., 94.) *Caroline M. McDougal* (Asst. Sec. Bussey), 3 P. D., 269.

Although the rate of pension is fixed by a special act, and may not, therefore, under section 4720, Revised Statutes, be varied by the provisions of the general law, yet, under section 4715, Revised Statutes, the pensioner may surrender his certificate under said act and take any pension he may be entitled to under the general law. *William Gallagher* (Asst. Sec. Bussey), 4 P. D., 283.

A pensioner under a special act may surrender his certificate thereunder and take under the general law; or if the pension under the special act is greater than is allowable under the general law, and the claim under the general law entitles to arrears, prior to the commencement of pension under the special act such arrears may be paid without surrendering the certificate under the special act. *Robert H. Brown* (Asst. Sec. Bussey), 4 P. D., 305.

(c) But a special-act pensioner may not receive additional pension.

Section 4720, Revised Statutes, prohibits the payment of any additional allowance beyond that stated in the special act. *Jane Dulaney* (Sec. Schurz), 5 P. D. (o. s.), 435.

Under section 5 of the act of July 25, 1882, a pensioner under a special act may not receive in addition thereto a pension under the general law, unless said special act expressly so provides. *Daniel W. Martin* (Asst. Sec. Hawkins), 1 P. D., 408.

3. Between general law and act of June 27, 1890.

A pensioner under the act of June 27, 1890, may prosecute a claim for pension under the general law or any special act of Congress, but no person shall receive more than one pension

2. Between general law and act of June 27, 1890—Continued.

for the same period. *Lyman T. Haines* (Asst. Sec. Reynolds), 7 P. D., 42.

When claim for increase of invalid pension and claim for pension under the act of June 27, 1890, are pending at the same time, a different attorney appearing in each case, claimant has a right to elect under which law he will be pensioned, and the attorney in the successful claim is entitled to the fee. *Robert E. Quivey* (Asst. Sec. Reynolds) 7 P. D., 58.

Section 4715, Revised Statutes, relating to the matter of "election," is not properly applicable to the administration of the act of June 27, 1890, the provisos of section 2 of the latter act having clearly designated under what circumstances claimants or applicants under other laws shall receive its benefits. *Clement B. Guchess* (Asst. Sec. Reynolds), 8 P. D., 118.

The claimant, being a pensioner under prior laws at less than \$6 per month and having shown himself entitled to the benefits of the act of June 27, 1890, a certificate under the latter act must issue to him, no election on his part being necessary; and his acceptance of pension under said act does not preclude him from thereafter prosecuting a claim for and receiving pension under any other act, the only restriction being that he shall not receive more than one pension for the same period. This decision is not intended to affect adjudications heretofore made by the Bureau of Pensions and accepted by the claimants. *Ibid.*

4. Between invalid and dependent pensions.

Appellant was pensioned as dependent father at the rate of \$8 per month from October 5, 1883, and at \$12 per month from March 19, 1886, having at the same time a claim pending for invalid pension, which was allowed April 12, 1893, at \$2 per month from February 21, 1863, \$4 from September 13, 1882, and \$17 from October 14, 1891, deducting all payments made under the dependent pension certificate. He contends that he should take pension under the invalid certificate to October 5, 1883, and thereafter under the dependent certificate until October 14, 1891, when he should again be pensioned in accordance with the invalid certificate. *Held*, That he was entitled to pension under the invalid certificate to the date of the commencement of his pension as dependent father, October 5, 1883, and that he was entitled to elect under which pension certificate he would take pension after that date, and that said election would be final, and thereafter he should be paid pension under the certificate so selected and no other. *Jesse Curry* (Asst. Sec. Reynolds), 7 P. D., 514.

See SUBTITLE 8.

5. By a mother, between pensions on account of two sons.

A mother may obtain higher pension for another son, of higher rank, by surrendering certificate obtained for dependence on a son of lower rank; and such higher pension should commence from date of last payment. *Mother of Charles F. and Thomas Kelly* (Sec. Browning), 6 L. B. P., 350.

6. Reelection.

When a pensioner was, pursuant to his election, transferred from the roll of invalid pensioners to that of Revolutionary pensioners under the act of March 18, 1818, he may not be retransferred to the former roll in order to bring him within the act of June 7, 1832, as amended by the act of February 19, 1833, as there is no law to warrant such second transfer. *Atty. Gen. Butler*, 2 Op., 612.

See also SUBTITLES 4 and 8.

7. Waiver.

A claimant for pension under the act of March 9, 1878, should not be required to sign a waiver of all claims for pension under acts passed prior thereto, and such waiver could have no legal effect upon his claim for pension under the act of February 14, 1871 (now section 4736, Revised Statutes), if he should thereafter desire a claim under said law. *John Coley* (Sec. Schurz), 5 P. D. (o. s.), 69.

8. Notice.

Where the notice sent to the soldier of his privilege to elect to take pension under the general law in lieu of the pension he was receiving under the act of June 27, 1890, did not inform him from what date the old-law pension would begin, or that if he accepted it he would have to relinquish all the pension he had received under the act of June 27, 1890, for the same period, and he thereupon made a choice which resulted in depriving him of pension entirely for nine months and gave him a smaller rate for the future, and died about a month after receiving the certificate, the election by him was not binding and final, as he did not have reasonable time and opportunity to take steps to have said action set aside. Such action may now be set aside and readjudication made at the request of his widow. *Randal Montgomery* (Asst. Sec. Reynolds), 8 P. D., —.

See also ARREARS; CONSTRUCTION OF LAWS; DOUBLE PENSION; REIMBURSEMENT; REVOLUTIONARY WAR (Act of June 7, 1832).

ELLET'S RAM FLEET.

See WAR VESSELS.

EMANCIPATION PROCLAMATION.

See DEPENDENT RELATIVES (Slave mothers).

EMBEZZLEMENT.

See BOUNTY LAND.

ENLISTED PERSONS.

The decision of the question whether claimant's husband was "an enlisted man in the service of the United States" rests with the War Department. *Hannah Chapman* (Asst. Sec. Reynolds), 7 P. D., 385.

See also HOSPITAL MATRONS.

ENLISTMENT.**1. Defined.**

- (a) *Distinguished from enrollment.*
- (b) *Due enlistment construed.*
- (c) *Voluntary enlistment construed.*

2. When enlistment commences.**3. Date of, as evidence.****4. Under act of July 27, 1892.****1. Defined.**

Enlistment is a personal contract between the soldier and the Government, to which no other person may be subrogated by private agreement between himself and the soldier. *Mary E. Davis* (Asst. Sec. Reynolds), 7 P. D., 56.

Enlistment is a contract between an able-bodied man, duly qualified for the military or naval service, and the United States Government, made through its authorized officers or agents, wherein the recruit obligates himself by oath to serve in the military, naval, or marine service for a certain period of time, in consideration of such bounty, rations, pay, and clothes as are or may be established by law, the Government reserving the right to modify, rescind, or reject the contract at its discretion, agreeably to "public policy." *Cornelius Warren* (Asst. Sec. Hawkins), 2 P. D., 278.

In order to constitute a valid enlistment, there must be not only a tender of service on the part of the person desiring to enlist, but an acceptance of the same by the Government, acting through some duly authorized officer or agent. *Hannah Chapman* (Asst. Sec. Reynolds), 7 P. D., 385.

(a) Distinguished from enrollment.

The word "enrolled" is not synonymous with "enlisted," and may refer to the list of recruits made out by the officer organizing the company. *Cornelius Warren* (Asst. Sec. Hawkins), 2 P. D., 278.

1. Defined—Continued.**(b) Due enlistment construed.**

The words "duly enlisted" necessarily mean a regular legal enlistment, such as is authorized by law and recognized by military rule and precedent. *Widow of Pierre M. Kennerly* (Asst. Sec. Hawkins), 2 P. D., 265.

In order to be "duly enlisted" it is not absolutely necessary that a soldier be enlisted by a regular recruiting officer, but the enlistment must be in pursuance of some law authorizing the raising of troops, and in some command whose formation is legally provided for and called into existence. *Ibid.*

(c) Voluntary enlistment construed.

The act of March 3, 1877, is remedial being designed to benefit those excluded by section 4716, Revised Statutes, and to hold the words "voluntarily enlisted" to mean an enlistment which did not involve any action on the part of the recruit, except a verbal request or an enrollment by the recruiting officer without the administration of an oath, would be a strained and unauthorized construction. *Cornelius Warren* (Asst. Sec. Hawkins), 2 P. D., 278.

2. When enlistment commences.

Enlistment commences with the date of enrollment, and not with that of muster in. *Bradford C. Kinyon* (Actg. Sec. Cowen), 2 P. D. (o. s.), 9.

3. Date of, as evidence.

The date of enlistment is evidence only so far as that fact may elucidate the purposes of enlistment. *Franklin S. Cowen* (Asst. Sec. Reynolds), 7 P. D., 374.

4. Under act of July 27, 1892.

Enlistment is a prerequisite condition of title to pension under the act of July 27, 1892, and can be proven in cases thereunder only by the records or by the certificate of the proper officer of the War Department. Evidence as to performance of service or as to honorable discharge therefrom is incompetent and inadmissible in the absence of above proof as to enlistment. *William C. Williamson* (Asst. Sec. Reynolds), 8 P. D., —.

See also DESERTION; DISLOYALTY; EVIDENCE; SERVICE.

EPILEPSY.

See EVIDENCE (Record); SEQUENCE.

EQUIVALENT DISABILITIES.

See DISABILITIES.

ERASURES.

See BOUNTY LAND.

ERROR.

See APPEALS; RATING; REIMBURSEMENT; REBATING;
SPECIAL ACT.

ESTOPPEL.

See EVIDENCE; REMARRIAGE.

EVIDENCE.

1. Generally.
2. Admissions and statements by claimant.
3. Affidavits—execution of.
 - (a) *Blank forms.*
 - (b) *Forged, effect of.*
4. Allegata et probata.
 - (a) *Under act of June 27, 1890.*
5. Benefit of doubt.
6. Bounty-land warrant—not necessarily evidence of title to pension.
 - (a) *When prima facie evidence of title to pension.*
 - (b) *When not prima facie evidence of title to pension.*
 - (c) *When may be rebutted as prima facie evidence.*
7. Burden of proof.
8. Casualty.
9. Certificate of disability—generally.
 - (a) *Navy certificate.*
 - (b) *Statements presumed to have been from personal knowledge.*
 - (c) *Statements presumed to have been warranted by the facts.*
 - (d) *Is presumed to state all serious disabilities then existing.*
 - (e) *Is conclusive unless impeached for fraud or mistake, or outweighed.*
 - (f) *But evidence to outweigh must be clear and positive.*
 - (g) *And evidence adduced years after is not sufficient.*
 - (h) *Can not be controverted by affidavit of surgeon who made it.*
 - (i) *Nor by claimant's statements from memory years after.*
 - (j) *But is rebutted by record of subsequent service.*
 - (k) *Adverse, overcomes presumption of prior soundness, unless outweighed.*
 - (l) *But other evidence may establish soundness notwithstanding.*
 - (m) *When adverse certificate is sufficient to justify rejection.*
 - (n) *Two certificates, one nearest enlistment taken as to prior soundness.*
10. Certificates of examination—not evidence.
 - (a) *Should be disapproved on sufficient reasons, only.*
 - (b) *Can not be controverted by citizen or family physicians.*
 - (c) *By board overcomes that by a single surgeon.*
 - (d) *Of special examinations—section 4775, Revised Statutes.*
11. Circumstantial.
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13. Complete, when.
14. Conflicting—discrepancies.
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17. Estoppel—divorce estops denial of marriage.
 - (a) *Accompanying resignation with certificate of disability estops.*
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18. Expert.
19. Extra pay, grant of—as evidence under act of January 29, 1887.
20. Indigence—under act of May 1, 1820.
21. Insurance, statements as to disability in application for.
22. Judgments of courts.
23. "Killed in battle," proof of.
24. Lay testimony unsupported by record or medical evidence—when insufficient.
 - (a) *When insufficient to prove origin of insanity.*
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 - (c) *In claim for restoration.*
 - (d) *Where probable cause of disability subsequent to service is shown.*
 - (e) *Where there is record of another than alleged cause.*
25. Line of duty.
26. Marriage—parol evidence.
27. Medical—not always indispensable.
 - (a) *When requisite.*
28. Medical referee, opinions of.
 - (a) *Conflicting opinions of different medical referees.*
29. New disability—presumption is adverse.
 - (a) *Lay testimony, furnished years after discharge, when insufficient.*
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31. Obscure diseases or causes.
 - (a) *Epilepsy.*
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 - (a) *In absence of any record, parol is sufficient, under act of July 27, 1892.*
 - (b) *Written discharge, corroborated by parol evidence, may be sufficient.*
 - (c) *Admissible to prove individual service where record shows company's service.*
 - (d) *Can not be accepted to contradict the record.*
 - (e) *Where party making record did not have personal knowledge.*
 - (f) *As to substitute service.*
 - (g) *As to contracts of enlistment.*
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35. Presumptions—generally.
 - (a) *From lapse of time between service and death.*
 - (b) *Of enlistment.*
 - (c) *From official records, generally.*
 - (d) *From hospital records.*
 - (e) *Of origin, when disability appears soon after discharge.*
 - (f) *Of line of duty, when service origin is shown.*
 - (g) *Of soundness at enlistment.*
 - (h) *From fact of subsequent service.*
 - (i) *Under section 4719, Revised Statutes.*
 - (j) *Of legitimacy.*
 - (k) *From age at enlistment.*

36. Prior soundness and unsoundness, generally.
37. Proof.
38. Record of War Department.
 - (a) *Is not indispensable.*
 - (b) *May not be questioned, but is conclusive.*
 - (c) *Is not conclusive.*
 - (d) *Changing record, evidence as to.*
 - (e) *As to service, when required—act of July 4, 1864.*
 - (f) *Of other than alleged disability.*
 - (g) *Adverse.*
 - (h) *Casualty.*
 - (i) *State v. United States.*
39. Reduction.
40. Reimbursement.
41. Res gestæ.
42. Restoration—generally.
 - (a) *Under section 4719, Revised Statutes.*
43. Secondary.
44. Special examiner's reports.
45. Sufficiency and insufficiency—generally.
 - (a) *As to service origin—cases where evidence is held insufficient.*
 - (b) *Cases where evidence as to service origin is held sufficient.*
 - (c) *Where no present disability is shown, claim not allowable.*
46. Vicious habits—under general law.
 - (a) *Under section 2, act of June 27, 1890.*
47. Weight of.

1. Generally.

A decision in a pending claim should be based upon all the evidence and testimony adduced, and if that is not sufficient to prove the validity of the claim it can not be aided by the declaration of the claimant; and the evidence and testimony should be tested by those rules of evidence which are applied by courts of justice in the settlement of rights of parties litigant, as the testimony is *ex parte* and the Government has no opportunity for cross-examination of the witnesses. *Widow of William McClure* (Sec. C. B. Smith), 5 L. B. P., 24.

In the adjudication of a claim for pension, only sworn testimony in its support should be received in its consideration (excepting, of course, what is termed record evidence); and it is equitable, therefore, that a pension granted upon such evidence should not be suspended or withheld except upon evidence of the same character. *Samuel Brooks* (Actg. Sec. Cowen), 1 P. D. (o. s.), 17.

Questions of legality of evidence in pending invalid claims should be determined by the proper legal adjudicating division of the Pension Office, instead of the medical referee. *Widow of Albert S Wright* (Sec. Schurz), 6 P. D. (o. s.), 405.

1. **Generally**—Continued.

It should not be required that a surgeon, in his examination of a claimant, must give the technical name of the disability found to exist, but it is sufficient if the fact is shown by credible witnesses, whether medical or not, that the soldier has been disabled and that he contracted the disability in line of duty in service. *William Willis* (Sec. Teller), 12 P. D. (o. s.), 296.

2. **Admissions and statements by claimant.**

It being shown that when claimant left camp on a mule to draw rations he was well and free from injury, and when he returned his wrist was swollen, his statement at the time that said injury was caused by being thrown from his mule is accepted as sufficient evidence of incurrence. *John Richards* (Asst. Sec. Hawkins), 1 P. D., 235.

Where claimant has a hospital record which fails to mention the disability alleged as the basis of pension, and nine years subsequent to his discharge he swore, and sought to prove, that the alleged disability was due to a railroad accident, his said admissions will be accepted as showing that such disability was not due to his military service. *John W. Dalton* (Asst. Sec. Hawkins), 1 P. D., 450.

Before the statements of a claimant alone can be accepted as sufficient to establish incurrence, they must be sustained and corroborated by all the surrounding circumstances, and must be in entire consonance with the statements of the record. Citing *John Richards*, 1 P. D., 235. *Edwin H. Bonton* (Asst. Sec. Hawkins), 2 P. D., 23.

The claimant's affidavit, unsupported by medical testimony, and uncorroborated by officers, comrades, surrounding circumstances, or the record, is insufficient to establish the claim. Citing *Edwin H. Bonton*, 2 P. D., 23; *John Richards*, 1 P. D., 235. *Fritz Mueller* (Asst. Sec. Hawkins), 2 P. D., 192.

See also SUBTITLES RES GESTÆ; VICIOUS HABITS.

3. **Affidavits**—execution of.

Affidavits executed before a justice of the peace who is the attorney in the case can not be accepted as evidence. *William A. Sinclair* (Sec. Chandler), 3 P. D. (o. s.), 356.

See SUBTITLE 13.

Affidavits not prepared in accordance with directions contained in Bureau Order No. 229, approved by the Department June 19, 1893, will not be accepted as evidence in pension claims. *Sarah A. Griswold* (Asst. Sec. Reynolds), 7 P. D., 41.

Evidence verified before an officer who is the claimant's attorney can not be considered in the adjudication of a claim

3. Affidavits—execution of—Continued.

for pension. Evidence thus verified should be returned to the attorney or the claimant, as the circumstances may warrant, with information as to the reason why it can not be considered, and such other and further information as may be deemed proper and advisable. Willful violation of the rule is ground for disbaring an attorney. *Lydia A. Miner* (Asst. Sec. Reynolds), 8 P. D., 104.

(a) Blank forms.

Action of office sustained in declining to consider evidence made up by filling in, on blank forms of affidavit, answers to printed interrogations. *Stevens & Co.* (Sec. Chandler), 4 P. D. (o. s.), 78.

(b) Forged, effect of.

It is held on the evidence that service origin is proved by the evidence taken on special examination, and claim should be allowed notwithstanding that forged affidavits had been filed. *George W. Fraley* (Asst. Sec. Bussey), 6 P. D., 218.

See SUBTITLES 13, 38 (i), and 47.

4. Allegata et probata.

An allegation by a claimant that he was a regularly commissioned officer of the Army, precludes any presumption which might otherwise arise that he was only an officer de facto, and he must prove the fact alleged by either producing such commission or by accounting for its absence and proving its contents by satisfactory evidence. It is not sufficient to prove the facts stated in the commission, but it must be shown that the commission stated such facts. *Widow of William McClure* (Sec. C. B. Smith), 5 L. B. P., 24.

Soldier was pensioned for disease of lungs. On application for increase examination showed that the disability was disease of the heart: *Held*, That as the evidence has been deemed sufficient to prove that the disability originated in the service, a new certificate should be granted for disease of heart. *George Linn* (Sec. Schurz), 5 P. D. (o. s.), 260.

Where claimant was discharged for a disability different from that alleged, his allegations not being sustained by the record or by medical evidence of treatment while in the service or since discharged, the claim should be rejected. *Peter Peterson* (Sec. Schurz), 7 P. D. (o. s.), 296.

Soldier being sound at enlistment and the evidence showing service origin and continuance of a pensionable degree of disability from general debility, the claim should be allowed under declaration alleging that claimant while in service was

4. *Allegata et probata*—Continued.

attacked with a severe pain in the right side disabling him for military duty, and the disability resulted in internal abscess, although no abscess is found on examination. *Widow of Charles H. Noble* (Asst. Sec. Bussey), 6 P. D., 268.

(a) Under act of June 27, 1890.

If an application for pension under the second section be filed, and the proof shows that a pensionable disability under the act does not exist, no issue will be made thereunder and the claim should be rejected. If an application be filed under the second section and it can not be shown that a pensionable disability existed at the date of filing, but such a disability is shown to have existed subsequently, then before pension can be allowed for said disability, a new declaration must be filed. *Timothy L. Carley* (Asst. Sec. Reynolds), 7 P. D., 12.

See also *James J. Durkee*, general title DECLARATIONS.

5. *Benefit of doubt*.

Where the proofs as to the question of actor and subject are balanced, and it is impossible to determine by them whether the case be one of contemporaneity or collocation only or of cause and consequence, it is a reasonable inference of public policy to presume in favor of the service. *Atty. Gen. Cushing*, 7 Op., 149.

The soldier being found one morning in his tent dead, with a shot through his head, and the circumstances of the case all tending to show death was due rather to accident or the act of another than to suicide, the presumption should incline toward the claimant, and claim be allowed, as held in the case of *Mary Jane Vimont*. Citing, also, *Nathaniel Cook*, as to line of duty. *Widow of John Benner* (Sec. Delano), 1 P. D. (o. s.), 355.

Where it is satisfactorily shown that the cause, due to the service, reduced the soldier to such a low state that he died of a disease the origin of which skilled physicians were unable to determine, but which all the facts and surrounding circumstances tend to show was due to his enfeebled condition from the service cause, or that he was unable, in consequence of such condition, to resist the attack of the fatal disease, the claimant should be given the benefit of the doubt, and claim allowed. *Widow of Valentine Scherneck* (Sec. Teller), 14 P. D. (o. s.), 130.

It being more probable from the evidence that the disability originated from causes to which the soldier was necessarily exposed while in the line of duty than from causes having no

5. Benefit of doubt—Continued.

necessary connection with the service, the presumption should incline toward the claimant, and the disability be held due to the former causes. *David A. Sawyers* (Asst. Sec. Hawkins), 2 P. D., 70.

Where there is lack of positive evidence showing *origin* of an alleged disability in the line of duty, and yet there is a record of the existence of the disability in the service, and a line of circumstantial evidence of great weight sustaining the claimant's allegations, there will follow a reasonable presumption in favor of the claim. *Peter N. F. Von Otterndorf* (Asst. Sec. Bussey), 3 P. D., 341.

The medical referee having held that the present disability may, from a medical standpoint, have been caused by the injury shown to have been incurred in service and line of duty, and no other reasonable or probable cause for said disability being shown, claim is allowed, although the medical referee stated, in his opinion, that he did not think the evidence showed that said disability was a result of said injury. *George L. Emil Sherer* (Asst. Sec. Bussey), 4 P. D., 5.

It being shown that the soldier died from an attack of pleuro-pneumonia eight years after discharge; that he was sound at enlistment; that he was broken down in health at discharge, and suffered severely from a pain in his side continuously from discharge until death, which became later extremely severe, and that there were indications of approaching dissolution before the fatal pneumonia appeared, it is held that although the connection between the fatal pleuro-pneumonia and the service is not medically established under the facts shown, the claimant should be given the benefit of the doubt, and the claim should be allowed. *Widow of John Garrett* (Asst. Sec. Bussey), 4 P. D., 385.

In cases where the doubts as to the merits of the claim exceed the evidences of merit, the rule of practice requires the rejection of the claim. Where, however, the evidence as a whole gives a claim the appearance of merit, and the defect in the chain of evidence is remediable by a reasonable presumption in its favor, the claim should be admitted. *Sarah Chapin* (Asst. Sec. Bussey), 5 P. D., 85.

See SUBTITLE: CERTIFICATE OF DISABILITY.

6. Bounty-land warrant—as evidence of title to pension.

The fact that a widow had completed proof of title to a bounty-land warrant does not show her entitled to pension, as proof that the soldier's death was due to the service, and

6. Bounty-land warrant—as evidence of title to pension—Cont'd.

to cause originating in line of duty therein, which is essential to show her title to pension, is not required in a bounty-land claim. *Widow of Jeremiah Howe* (Sec. Usher), 5 L. B. P., 155.

The allowance of a bounty-land warrant is not necessarily evidence of title to pension, as the conditions on which such warrant issued are not always the same as those entitling to pension. *Ibid.*

The granting of a bounty-land warrant based upon the title thereto conferred by the act of March 3, 1855, does not necessarily constitute proof of title to pension under the act of July 27, 1892. *William C. Williamson* (Asst. Sec. Reynolds), 8 P. D., —.

(a) When prima facie evidence of title to pension.

The Government having accepted parol evidence of service and granted a bounty land warrant thereon, it is now bound, under section 3 of the act of March 9, 1878, to accept the grant of land warrant as prima facie evidence to establish a pension claim based on the same evidence of service. *Mary Curry* (Sec. Schurz) 6 P. D. (o. s.), 47.

Application for pension where claim is based upon granting of bounty land to substitute, proved by parol evidence, though principal subsequently received bounty land based upon roll bearing his name and his own affidavit: *Held*, That the granting of bounty land to substitute furnished prima facie evidence of widow's title to pension, and that the subsequent granting of bounty land to principal was not sufficient to rebut title of substitute, when as a matter of fact the office filed a caveat in the Land Office against the issue of patent in warrant of principal; the Government can not accept in rebuttal evidence which it declined to accept for that purpose in the adjudication of the bounty land claim, in bar to widow's claim for pension resting on such grant. *Betsy A. Fox* (Sec. Schurz), 7 P. D. (o. s.), 31.

Under the act of January 29, 1887, a grant of bounty-land warrant is prima facie evidence only of the service (and discharge) necessary under the bounty-land law to entitle to a warrant, and is no evidence under said act as to length of service or that service was rendered in Mexico, or on the coasts or frontier thereof, or en route thereto. *Robert W. P. Muse* (Asst. Sec. Hawkins), 2 P. D., 180.

(b) When not prima facie evidence of title to pension.

The allowance of bounty land to a teamster (not an enlisted or drafted man) under the act of March 3, 1855, can not be

6. Bounty-land warrant—as evidence of title to pension—Cont'd.

(b) When not prima facie evidence of title to pension—Continued.

regarded as prima facie title to pension under the act of March 9, 1878. *Mary Scully* (Sec. Schurz), 6 P. D. (o. s.), 393.

The prima facie evidence of title to pension established by issue of bounty-land warrant may be rebutted upon new report from rolls showing that warrant was improperly granted; and where the claimant is unable to furnish further proof, such application for pension should be rejected. *Nathaniel Aitken* (Sec. Schurz), 7 P. D. (o. s.), 94.

Congress, in providing that the grant of a land warrant shall be prima facie evidence of service, meant such prima facie evidence shall be considered in connection with other evidence in determining the question of service. It shifts upon the Government the burden of proof; places upon it the duty of disproving, if necessary, the prima facie case. *Lucy A. Wood (widow)* (Asst. Sec. Bussey), 5 P. D., 75.

(c) When may be rebutted as prima facie evidence.

In all cases of doubt, proof of the fact entitling a party to the benefits of the pension laws must be made. The burden of proof is upon the claimant. When facts are established, such presumptions as are justly inferable therefrom and are founded on our experience of the connection between the fact proved and that presumed are allowable. These inferences may be certain or probable, as in cases where such matters are referred to the arbitrament of a jury or other triers of the fact in issue. *Widow of Thomas T. Vimont* (Sec. Harlan), 5 L. B. P., 445.

7. Burden of proof.

Where the mother and alleged widow of soldier contest for pension and four investigations by special agent fail to reach a satisfactory result: *Held*, That, for the present, the Government should incur no further expense, but that the burden of proof rests upon the parties in interest to file evidence to determine the question of title. *Julia McLaughlin* (Sec. Schurz), 4 P. D. (o. s.), 163.

In case of an accidental wound by the claimant's own gun, there being no evidence on file to corroborate his statement as to details, it is incumbent upon him to furnish proof to conclusively establish the fact that the wound was received in the line of duty. *Mossir Dishony* (Sec. Schurz), 6 P. D. (o. s.), 356.

The burden of proof in establishing a prima facie case for pension is on the claimant, and it is not the purpose of a special examination to supply evidence which should be furnished by the applicant. *Alida Cramer* (Asst. Sec. Hawkins), 1 P. D., 47.

7. Burden of proof—Continued.

The burden of proof to establish adulterous cohabitation is on the Government. *Addie A. Crofoot* (Asst. Sec. Hawkins), 1 P. D., 391.

See also ADULTEROUS COHABITATION.

8. Casualty.

See SUBTITLES 18 and 38.

9. Certificate of disability—generally.

Record evidence, such as certificate of disability upon which a soldier was discharged from the service, made contemporaneously with the facts to which it relates, or upon which it was based, and showing *origin*, should be accepted as proof appertaining to the incurrence of claimant's alleged disability. Such a record possesses a value superior to all other testimony in relation to the facts therein recited. *Thomas H. McCreary* (Asst. Sec. Hawkins), 1 P. D., 275.

The certificate of disability on which claimant was discharged, stating that his injury was received in the line of duty, is considered as competent contemporaneous record evidence as to the incurrence of an accidental injury in the line of duty. *Henry A. Helmer* (Asst. Sec. Bussey), 3 P. D., 111.

Reconsidered and overruled: 7 P. D., 376.

(a) Navy certificate.

A certificate, or official report, of a sailor's death or disability, made under and in conformity with paragraph 1417, Article XXVI, Regulations for the Government of the United States Navy (1870), page 220, is entitled, as record evidence, to the same significance as that which is possessed by a surgeon's certificate of disability granted to a soldier, and must be accepted, in the absence of proof showing fraud or mistake, as conclusive evidence of the state of facts which it discloses. *Widow of Alfred T. Cowie* (Asst. Sec. Hawkins), 2 P. D., 58.

(b) Statements presumed to have been from personal knowledge.

The statements contained in a surgeon's certificate of disability, as to the name and origin of a disease or injury, are presumptively derived from personal knowledge, or based upon proper and reliable information. *John W. Benedict* (Asst. Sec. Hawkins), 1 P. D., 32.

Where a certificate of disability states that the disability alleged was incurred by claimant while in the line of duty, the reason for said statement is presumptively derived from personal knowledge, or based upon proper and reliable information. *Lewis F. Stolzenburg* (Asst. Sec. Hawkins), 1 P. D., 429.

9. Certificate of disability—Continued.

(c) Statements presumed to have been warranted by the facts.

Where soldier was discharged upon certificate of disability, made by the surgeon of a general hospital, because of valvular disease of the heart and hypertrophy, existing prior to enlistment, although the source from which said opinion was derived can not now be determined, it must be presumed, from the history of the case (or from the soldier's direct statement), that the surgeon found sufficient evidence to warrant him in making such record; and the admissions of the claimant that he was afflicted with rheumatism in shoulder prior to enlistment tend in some degree to confirm said record: *Held*, upon the facts presented, that the rejection of the claim was proper. *John C. Dillon* (Sec. Schurz), 6 P. D. (o. s.), 395.

(d) Is presumed to state all serious disabilities then existing.

Where soldier was discharged on certificate of disability, signed by the surgeon of the regiment, on account of cicatrix from cut on foot received prior to enlistment, which certificate is silent as to claimant's allegation that injury was received in the service, the presumption is strong that if the claimant had been disabled as alleged the surgeon would have known it and mentioned it in his certificate. *Joseph H. Harwood* (Sec. Schurz), 6 P. D. (o. s.), 411.

A certificate of disability for discharge should be considered as containing a description of all the disabilities with which the soldier was suffering and which rendered him unfit for duty at the time it was issued, and this presumption will obtain until overthrown by positive, direct, and conclusive evidence. Citing, as holding above, *Alonzo F. Wescott*, 1 P. D., 316. *Edwin H. Bonton* (Asst. Sec. Hawkins), 2 P. D., 23.

A contemporaneous official record, *e. g.*, a certificate of disability, is the best evidence of the facts recited therein, and is presumed to state all the serious disabilities then existing; but a mistake in said certificate as to the character or cause of the disability causing the discharge may be shown and the proper disability admitted, as in this case. *George L. Emil Sherer* (Asst. Sec. Bussey), 4 P. D., 5.

(e) Is conclusive unless impeached for fraud or mistake, or outweighed.

A certificate of disability for discharge, stating that disability resulted from shell wound received in the service, may be rebutted by parol evidence and a certificate of an examining surgeon showing that the disability existed prior to enlistment. *Joseph P. Mathew* (Sec. Schurz), 7 P. D. (o. s.), 39.

Where surgeon's certificate of disability states that disability alleged existed prior to or at enlistment, it shall be accepted

9. Certificate of disability—Continued.

- (e) **Is conclusive unless impeached for fraud or mistake, or outweighed—**
Continued.

as establishing the fact, unless fraud or mistake be apparent on the face of the certificate itself, or is clearly established by the most positive and conclusive evidence. *Francis N. Hines* (Asst. Sec. Hawkins), 1 P. D., 332.

The statements contained in the certificate of disability upon which the soldier was discharged from the service are accepted as establishing the facts therein stated, unless fraud or mistake be apparent upon the certificate, or be proved by positive evidence. *Ellis Luther* (Asst. Sec. Hawkins), 1 P. D., 387; *Adam Cutts* (Asst. Sec. Hawkins), 2 P. D., 26; *David G. Rummel* (Asst. Sec. Hawkins) *ibid.*, 91.

While, as a rule, a certificate of disability should be taken as fully establishing the facts stated therein, it may be overthrown in exceptional cases wherein it is apparent, upon the face of the certificate, that a "mistake" of facts has been made, or wherein the existence of a "mistake" in such certificate is established by positive and conclusive evidence. *Benjamin Tutt* (Asst. Sec. Hawkins), 1 P. D., 412.

The certificate of disability upon which the soldier was discharged from the service shall be taken as fully establishing the facts therein stated, unless fraud or mistake be apparent from the face of the certificate itself, or be clearly established by the most positive and conclusive evidence. *Joseph D. Sawyer* (Asst. Sec. Hawkins), 2 P. D., 122.

Statements contained in certificates of disability upon which the soldier was discharged from the service are deemed conclusive evidence of the facts therein alleged, unless either fraud or mistake be apparent upon the face of the certificate itself, or is clearly established by conclusive evidence. Citing *Adam Cutts*, 2 P. D., 26; *W. H. H. Stone*, 1 P. D., 182; *Anson Howe*, *ibid.*, 198; *Thomas H McCreary*, *ibid.*, 275; *Isaac Williamson*, *ibid.*, 7. *Albert T. Chapin* (Asst. Sec. Hawkins), 2 P. D., 254.

Claimant was discharged, after three months' service, on a surgeon's certificate of disability from epilepsy, stated therein to have been contracted during service: *Held*, From the evidence, that he was a malingerer in the service, that his present condition is a result of his vicious habits, and that he did not contract epilepsy or any other disease while in service and line of duty, and rejection of claim is affirmed. *Jacob S. Probasco* (Asst. Sec. Hawkins), 2 P. D., 285.

The certificate of disability upon which a soldier is discharged is a contemporaneous record of such weight in evidence that it can not be contradicted by statements, made

9. Certificate of disability—Continued.

- (e) **Is conclusive unless impeached for fraud or mistake, or outweighed—Continued.**

many years afterwards, of the surgeon or of the officers or comrades of the soldier, in the absence of fraud or mistake in the making of said certificate. *Robert Hirsch* (Asst. Sec. Hawkins), 2 P. D., 304.

As a general proposition, a certificate of disability at discharge is conclusive evidence of the facts therein alleged; but an exception exists where fraud or mistake appears on the face of the certificate or is clearly established by conclusive evidence. Citing Adam Cutts, 2 P. D., 26; William H. H. Stone, 1 P. D., 182; Anson Howe, *ibid.*, 198; Thomas McCreary, *ibid.*, 257; Albert T. Chapin, 2 P. D., 254; Benjamin T. Tutt, 1 P. D., 412. *Henry A. Helmer* (Asst. Sec. Hawkins), 2 P. D., 385.

A certificate of disability made at discharge is a contemporaneous official record constituting the very best evidence to be obtained as to the truth of the recitals of fact therein contained, and can be successfully rebutted only by direct, positive, and conclusive evidence showing beyond question that there was an error or mistake of fact, or fraud, in making said record. *Robert B. Paxton* (Asst. Sec. Bussey), 4 P. D., 114.

A certificate of disability for discharge showing that such disability originated prior to enlistment is evidence of great weight, and can not be lightly set aside, but where the evidence clearly shows that a clerical error was committed in writing out the certificate the erroneous part may be disregarded. *Seth W. H. Giffin* (Asst. Sec. Bussey), 6 P. D., 264.

- (f) **But such evidence must be clear and positive.**

Weight of an adverse certificate of disability (as to prior unsoundness) can only be removed by the positive and cumulative testimony of medical men, one of whom should be, if attainable, the soldier's family physician. *Nathan Blew* (Sec. Chandler), 3 P. D. (o. s.), 348.

When it is sought to set aside the weight of an adverse certificate of disability, the testimony on that point should be of the most satisfactory and conclusive character. *Widow of Patrick J. O'Donnell* (Sec. Teller), 13 P. D. (o. s.), 351.

- (g) **And evidence adduced years after is not sufficient.**

A certificate of disability on which soldier was discharged, stating that the disability was received in a scuffle with a comrade, is not rebutted by testimony furnished thirteen years after the incurrance of the disability. *Lyman Mack* (Sec. Schurz), 7 P. D. (o. s.), 67.

9. Certificate of disability—Continued.

(g) And evidence adduced years after is not sufficient—Continued.

A discharge upon certificate of disability which states that the disability existed prior to enlistment will not be controverted by testimony of casual observers given twenty years after the said discharge. *John Casey* (Asst. Sec. Hawkins), 1 P. D., 209.

Lay testimony, given sixteen years after discharge, that claimant was injured by a limb of a tree falling on him April 7, 1862, is not sufficient to overcome the statement in surgeon's certificate of disability for discharge, dated in June, 1862, that he was suffering from a tumor on shoulder caused "by a fall a number of years since." *James H. Deatley* (Asst. Sec. Hawkins), 1 P. D., 404.

A claim having been rejected on the ground the alleged disability existed prior to enlistment and rejection affirmed on appeal, it is held that affidavits subsequently filed (and twenty-four years after the date to which they refer), to the effect merely that the affiants never knew nor heard that soldier had the alleged disease prior to enlistment, are not sufficient, in connection with the other evidence, to overcome the effect of the certificate of disability, made at the time of discharge, which states said disease existed prior to enlistment. *Widow of George W. Lewis* (Asst. Sec. Hawkins), 2 P. D., 334.

Lay and verbal testimony, given years subsequent to claimant's discharge from the service, and years subsequent to filing original claim for pension, is inadequate to overthrow the official statements contained in a surgeon's certificate of disability written at the date of claimant's discharge, and when claimant's name was dropped from the rolls upon such evidence, which was traced to a personal enemy, his name should be restored. Citing *Joseph D. Sawyer*, 2 P. D., 122. *Emanuel P. Steed* (Asst. Sec. Bussey), 3 P. D., 14.

(h) Can not be controverted by affidavit of surgeon who made it.

The surgeon's statement in the certificate of disability, made in the regular discharge of his official duty, as to the origin of a disability, must be accepted rather than his certificate made from memory long after the soldier's discharge. *David K. Mitchell* (Asst. Sec. Hawkins), 1 P. D., 62.

A statement in a surgeon's certificate of disability for discharge that soldier's disability existed prior to enlistment is not rebutted by the testimony of the surgeon who made such certificate, given twenty years thereafter, which states that said statement was incorrect, and was made by him because of an order preventing the discharge of soldier for disability unless the same existed prior to enlistment. *James Boyle* (Asst. Sec. Hawkins), 1 P. D., 149.

9. Certificate of disability—Continued.

- (h) Can not be controverted by affidavit of surgeon who made it—Cont'd.

A certificate of disability so far imports verity that it can not be overcome by the affidavit of the surgeon who signed it, as is held in *James Boyle*, 1 P. D., 149; *Isaac Williamson*, *ibid.*, 7; but it may be by proof of fraud or mistake. Citing *Benjamin Tutt*, 1 P. D., 412. *Henry Halstead* (Asst. Sec. Hawkins), 2 P. D., 221.

- (i) Nor by claimant's statements from memory many years after.

Where claimant was discharged on certificate of disability wherein it is stated that he admits that disability existed previous to date he was drafted, though increased since, the admission can not be controverted by his statement made from memory years afterwards. *Philip Newdecker* (Actg. Sec. Bell), 7 P. D. (o. s.), 221.

When a soldier has procured his discharge by reason of his own false statements, which said statements are recited in his certificate of discharge, he will not be allowed in a pension claim to deny the truth of these statements, but he may attack the fact that he made such statements, as fraud or mistake on the part of those who made the record is always open to proof. *John H. Ruhl* (Asst. Sec. Reynolds), 8 P. D., —.

- (j) But is rebutted by record of subsequent service.

Surgeon's certificate of disability for discharge, alleging total deafness, is rebutted by the record of a second service and certificate of disability for discharge on account of chronic disease of eyes, no reference being made to deafness. *Wilson S. Dillingham* (Asst. Sec. Hawkins), 1 P. D., 443.

- (k) Adverse, overcomes presumption of prior soundness—when.

A statement in the certificate for discharge that the disability on account of which the soldier was discharged existed prior to enlistment not only outweighs the presumption of prior soundness, or the claimant's allegation thereof, but satisfactorily establishes the fact stated until the same is clearly disproved. *Isaac Williamson* (Asst. Sec. Hawkins), 1 P. D., 7.

Cotemporaneous statements contained in the certificate of disability upon which the soldier was discharged from the service are held to be not only sufficient to overcome the presumption of prior soundness, but as fully establishing the facts therein stated until overthrown by unquestionable evidence. *Alonzo F. Wescott* (Asst. Sec. Hawkins), 1 P. D., 316; *John J. Fox* (Asst. Sec. Hawkins), *ibid.*, 289.

Cotemporaneous statements in the certificate of disability upon which the soldier was discharged are held to be not only

9. **Certificate of disability**—Continued.(k) **Adverse, overcomes presumption of prior soundness—when—Cont'd.**

sufficient to overcome the presumption of prior soundness, but as fully establishing the facts therein stated until overthrown by unquestionable evidence. *William Banner* (Asst. Sec. Hawkins), 1 P. D., 346.

A statement in the certificate of discharge that the disability on account of which the soldier was discharged existed prior to enlistment not only outweighs the presumption of prior soundness, or the claimant's allegation thereof, but satisfactorily establishes the fact until the same is clearly disproved. *Daniel Bidlake* (Asst. Sec. Bussey), 3 P. D., 27.

Claimant served from January 5, 1888, to June 12, 1889, when he was discharged on a surgeon's certificate of disability, in which it was stated that he was an imbecile and had been unfit for duty ever since joining the troop to which he belonged, and that his disability existed prior to enlistment. It is held that said certificate of discharge not only outweighs the presumption of prior soundness or the claimant's allegations thereof, but satisfactorily establishes the facts stated in such certificate until the same are clearly disproved. *Hilliard Preston* (Asst. Sec. Reynolds), 8 P. D., —.

(l) **But other evidence may establish soundness, notwithstanding.**

The testimony of two physicians, testifying from personal knowledge, that the claimant was a sound and healthy man at the time of enlistment, is entitled to more consideration, as affecting the rights of this claimant, than the presumptive evidence (uncorroborated) of the surgeon who gave the certificate for discharge some eight months after enlistment, stating such disability was contracted prior to enlistment, and especially so in view of the evidence of comrades that the claimant contracted, about seven months after enlistment, a severe cold which resulted in the disability for which he was discharged. *Andrew Wilson* (Actg. Sec. Cowen), 1 P. D. (o. s.), 404.

A certificate of disability, not made by parties who can reasonably be supposed to have had personal knowledge of the facts therein certified to, should in all cases be supported by corroborative parol evidence before it can be accepted as establishing the facts; and where such certificate is made by parties who must have had personal knowledge of the facts set forth therein, it should be regarded as merely prima facie true, only to be overthrown by very clear evidence of a contrary character. *James Gillespie* (Actg. Sec. Cowen), 2 P. D. (o. s.), 158.

9. Certificate of disability—Continued.

(l) But other evidence may establish soundness, notwithstanding—Cont'd.

A certificate of disability for discharge should not be held to be uncontrovertible evidence, even where it purports to show the origin of the disability prior to enlistment, unless it appear that the surgeon signing the same had personal knowledge of the fact certified to by him; and as three physicians testify in this case, from personal knowledge, as to prior soundness, and it is shown that the disability for which the soldier was discharged (rheumatism) has existed continuously since discharge, it is held that the certificate of disability for discharge, in which the examining surgeon states the soldier "says he has been subject for years" to rheumatism, is valueless as evidence of the origin of the disability, and the fact the claimant's statement referred to is shown to have been false, does not prejudice his pension claim. *Montsier Wheeler* (Sec. Chandler), 3 P. D. (o. s.), 341.

While great caution should be taken in accepting parol evidence, filed several years after an alleged incurrence, to controvert an adverse record, yet the weight to be given such testimony must depend largely upon the nature and character of the disability; and where the alleged disability (as in this case, disease of eyes) is stated in the certificate of disability at discharge to have been due to an anteservice cause, is not obscure, but of such a nature as to be apparent to the most casual observer, and reputable witnesses who were in such a position as to have personal knowledge of the facts testify to prior soundness, and the alleged disability is incompatible with the nature of the soldier's employment, said certificate should not be accepted as sufficient to overcome the presumption of prior soundness. *Robinson W. Smith* (Asst. Sec. Bussey), 4 P. D., 40.

While it is usual and safest to adhere to the ruling heretofore made, that the statement as to prior unsoundness contained in a certificate of disability for discharge not only outweighs the presumption of soundness but establishes the facts contained therein until disproved, yet when there seems to be a preponderance of evidence strongly in favor of the theory of soundness and adverse to the record, it must be held to controvert the record, and the soldier be given the benefit thereof. *Jonathan M. Rich* (Asst. Sec. Bussey), 4 P. D., 371.

(m) When adverse certificate is sufficient to justify rejection.

Certificate of disability based upon admission of claimant that disability existed at a period prior to date of enlistment is sufficient ground for rejection of application for pension. *Charles Coates* (Sec. Schurz), 6 P. D. (o. s.), 170.

9. Certificate of disability—Continued.

(m) **When adverse certificate is sufficient to justify rejection—Continued.**

Where soldier was discharged on certificate of disability, signed by officers of his company and regiment, stating that probably the disability for which he was discharged had its origin prior to enlistment, as he had been unfit for duty all the time he had been in the service, which certificate was corroborated by testimony elicited on special investigation: *Held*, That claim for pension based upon disease alleged to have been contracted in the service, and for which he was discharged, should be rejected. *George W. Dixon* (Sec. Schurz), 7 P. D. (o. s.), 149.

Claimant having failed to prove by officers and comrades that he was injured in the service, as alleged, the certificate of the assistant surgeon of his regiment, on which he was discharged, that such injury was incurred prior to enlistment, justifies rejection of claim. *Jeremiah Smith* (Asst. Sec. Hawkins), 1 P. D., 37.

Soldier, after having served but three months, was discharged on a surgeon's certificate of disability on account of piles, which certificate states that such disease existed four or five years prior thereto: *Held*, That as said record has not been disproved, the rejection of the claim for pension on account of said disease, on the ground that the same was not incurred in the service, was proper. *John Hobart* (Asst. Sec. Hawkins), 1 P. D., 122.

Where surgeon's certificate of discharge certifies to soldier's prior unsoundness, and the presumption that such certificate was correct is un rebutted, a claim is not established. *Widow of Henry Betz* (Asst. Sec. Hawkins), 1 P. D., 124.

(n) **Two certificates, one nearest enlistment taken as to prior soundness.**

Where there are two surgeons' certificates of disability for discharge, the finding of the one whose date is nearer the date of enlistment will be accepted to determine whether or not the disability existed prior to claimant's army service. *Edward Balmot* (Asst. Sec. Hawkins), 1 P. D., 231.

10. Certificates of examination not evidence.

Examining surgeons' certificates are not evidence within the meaning of section 6 of the act of July 4, 1864, so as to debar a claim under the limitation prescribed in said section, if such certificate is not filed within the period of limitation. *Peter M. Hostetter* (Actg. Sec. Cowen), 1 P. D. (o. s.), 66.

10. Certificates of examination not evidence—Continued.**(a) Should be disapproved on sufficient reasons only.**

Certificates of examining surgeons should not be disapproved or disregarded except for good and sufficient reasons. *Sheridan B. Smith* (Actg. Sec. Cowen), 2 P. D. (o. s.), 248.

(b) Can not be controverted by citizen or family physicians.

The reports of examining surgeons, under the instructions of the Pension Office, wherein they declare no disability to exist, can not be controverted by the testimony of a citizen physician. *James M. McCurdy* (Sec. Schurz), 6 P. D. (o. s.), 418.

The testimony of two unofficial physicians is not sufficient to controvert the report of a board of examining surgeons as to the existence of a disease which from its nature is not incident to the service and to which said board states claimant's present disability is due. *John P. Burdick* (Sec. Schurz), 6 P. D. (o. s.), 433.

The findings of a board of examining surgeons can not be controverted by lay testimony or the evidence of a family physician. To secure justice and uniformity of practice, the Department must, in questions of purely medical character, rely on its medical advisers. *Edward H. Crawford* (Asst. Sec. Hawkins), 1 P. D., 48.

Where claimant's right to increase of pension is purely a medical question, it is properly determined by medical examinations, and the report of such examinations, made by boards of examining surgeons, can not be overturned by the affidavit of claimant's family physician filed in the case. *Austin Brothers* (Asst. Sec. Hawkins), 1 P. D., 313.

Certificates of examining surgeons can not be set aside nor controverted by the testimony of either family physicians or neighbors. Citing *William L. D. O'Grady*, 1 P. D., 222. *John Blair* (Asst. Sec. Hawkins), 2 P. D., 183.

Examining surgeons are officers of the Government, and it is presumed that their duty has been properly performed in the absence of evidence to the contrary, and the single affidavit of a civil surgeon is not sufficient to impeach the certificate of a board of official surgeons. *Theodore M. Koyt* (Asst. Sec. Reynolds), 8 P. D., 331.

(c) By board overcomes that by single surgeon.

The report of a board of examining surgeons can not be set aside by the certificate of a single surgeon. The principle that an examination by a board of surgeons should take precedence over the examination of a single surgeon is recognized in law. *William J. Wyatt* (Sec. Schurz), 4 P. D. (o. s.), 242.

10. **Certificates of examination not evidence**—Continued.(c) **By Board overcomes that by single surgeon**—Continued.

The evidence of a single medical witness can not be accepted as sufficient to establish the alleged disability over the adverse report of the examining surgeons, and also of the special board of examiners. *George W. Thomas* (Sec. Teller), 10 P. D. (o. s.), 254.

The report of a board of examining surgeons is recognized under the law as entitled to precedence over the report of a single surgeon. The certificate of an examining surgeon can not be set aside by the testimony of either family physicians or neighbors. *Joseph L. Tanner* (Asst. Sec. Hawkins), 1 P. D., 63.

The long-established rulings of the Department have recognized the principle that an examination by a board of surgeons should take precedence over an examination by a single surgeon, and that examining surgeons' certificates can neither be set aside nor controverted by the testimony of family physicians or of neighbors. *Francis N. Barnard* (Asst. Sec. Hawkins), 2 P. D., 244.

Where there is conflict between the report of a board of examining surgeons and the testimony of a claimant's physician, the Department will, as a rule, be guided by the former, it being presumed that the examining surgeons are not only competent, but entirely unbiased, disinterested, and free from the peculiar influences which frequently warp (perhaps unconsciously) the testimony of the family or attending physician. *Philip T. Greely* (Asst. Sec. Bussey), 3 P. D., 320.

(d) **Of special examination—section 4775, Revised Statutes.**

The claimant being examined on October 29, 1880, under his original claim, and rated at one-fourth, was allowed pension at \$2 a month from discharge; but on filing an affidavit alleging injustice in such rating and asking a reexamination under section 4775, Revised Statutes, he was examined accordingly August 17, 1881, and rated one-half, to which rate he was increased from that date: *Held*, Said affidavit was not a claim for increase and the case was not governed by section 4698½, Revised Statutes; that the report of the examining board under section 4775, Revised Statutes, superseded that of the original examining surgeon, and one-half rating should be allowed from October 29, 1880. *Charles H. Barnard* (Sec. Kirkwood), 9 P. D. (o. s.), 52.

Under section 4775, Revised Statutes, the decision of a special board of examining surgeons is final, and concludes the claimant's case; but the decision of such a board prior to March 3, 1873, is governed by section 8 of the act of July 4, 1864, and

10. Certificates of examination not evidence—Continued.**(d) Of special examination—section 4775, Revised Statutes—Continued.**

the claimant is not concluded by such decision, unless he was then a pensioner on the rolls. *George W. Thomas* (Sec. Teller), 10 P. D. (o. s.), 254.

11. Circumstantial.

Where soundness prior to enlistment is shown, but the injury alleged was incurred without eyewitnesses under circumstances which clearly and immediately connect the origin of said injury with the service and the resulting disability, the injury is conclusively presumed to have been incurred as alleged, the claim for pension being proved by circumstantial evidence deemed equivalent to that of eyewitnesses. *Thomas S. Harkins* (Asst. Sec. Hawkins), 1 P. D., 459.

12. Competency.

The testimony of any credible persons who have personal knowledge of material facts is competent to prove those facts; and a claim should not be rejected because there is no record of the alleged disabilities and the claimant is unable to furnish medical evidence of treatment in service or at discharge. *Patrick J. McCormick* (Sec. Teller), 14 P. D. (o. s.), 30.

See DEPENDENT RELATIVES.

13. Complete, when.

Evidence is "complete" (within the meaning of the pension laws) when no objection whatever exists to the admission of the claim. *Ruling* (Sec. Cass), Pension Laws, etc. (1849), 92.

Evidence is not complete while anything of form or of substance is wanting, nor until it comes in such shape that its admissibility is unquestionable; and affidavits taken before a justice of the peace are not complete until certification as to his official character is furnished, as required by the rules of practice. *Atty. Gen. Wirt*, 10 Op., 562.

14. Conflicting—discrepancies.

The testimony as to the fact of injuries having been received in line of duty in service being positive, direct, and strong, his claim is admitted, although some of the witnesses, evidently through mistake, give the date of the receipt of such injuries as October, 1825, when the record shows the soldier was discharged in October, 1824, and although the record shows also that he was discharged on account of a "rheumatic complaint." *Stephen Knight* (Sec. C. B. Smith), 5 L. B. P., 1.

The evidence clearly showing the claimant's present disability was the result of disease contracted in line of duty,

14. Conflicting—discrepancies—Continued.

claim is allowed, although the witnesses differ in naming his disease, some calling it bronchitis, others pulmonary consumption. *Solomon Lee* (Sec. Browning), 6 L. B. P., 190.

The fact that the soldier had an epileptic fit in the service being established by several witnesses having personal knowledge of the fact, that such witnesses differ as to the date of the first attack, is not sufficient to warrant disallowance of the claim. Citing Stephen Knight (Sec. Smith). *Richard D. Pare* (Sec. Delano), 1 P. D. (o. s.), 482.

Affidavit of one comrade narrating differently from claimant circumstances of accidental wound is not sufficient for the allowance of the claim. *Robert Woten* (Actg. Sec. Bell), 6 P. D. (o. s.), 162.

In the absence of record evidence the unreliable and conflicting statements of claimant's witnesses will not establish a claim. *David Smith* (Asst. Sec. Hawkins), 1 P. D., 201.

When the evidence as to incurrence of an injury is so conflicting that it can not be determined with any degree of accuracy whether incurred in line of duty or not, and the claimant reenlisted in 1863 and served to the close of the war without appearing to be in any way disabled, incurrence of the disability alleged in the service and line of duty will not be accepted. *William Grossman* (Asst. Sec. Hawkins), 1 P. D., 220.

In the absence of record or other than conflicting affirmative evidence of the existence of the disability alleged, the claim is not established. *Timothy O'Reagan* (Asst. Sec. Hawkins), 1 P. D., 293.

The testimony being conflicting and some witnesses unreliable, this case is similar to *David Smith*, 1 P. D., 201. *Levi Reeves* (Asst. Sec. Hawkins), 2 P. D., 177.

Where a claimant's allegations are conflicting and are not corroborated by the record or evidence procured on special examination rejection was proper. *William O. McMurphy* (Asst. Sec. Hawkins), 2 P. D., 246.

15. Continuance of disability.

Where a claim is filed seventeen years after service and no medical treatment is shown for eighteen years after discharge: *Held*, disability did not originate in the service. *Abram R. Cowen* (Asst. Sec. Hawkins), 1 P. D., 101.

See also SUBTITLES INSURANCE; ORIGIN.

16. Cumulative.

See SUBTITLE LAY TESTIMONY; GENERAL TITLES APPEALS; RES ADJUDICATA.

17. Estoppel—divorce estops denial of marriage.

A person who has obtained a divorce is estopped from denying the legality of the marriage from which divorced. *Minor child of William H. Howe* (Sec. Chandler), 3 P. D. (o. s.), 101.

The widow of a deceased naval officer was allowed a pension from June 23, 1843, the date of his death, up to April 8, 1847, the date of her second marriage, after which it was discontinued. In 1854 she obtained a divorce from her second husband for intemperance and cruelty. She now alleges that the latter at the time of her marriage with him had a wife living, and that she was cognizant of this when she instituted her suit for divorce, but remained silent as to the fact. And she claims a restoration of the pension formerly allowed her as the widow of said officer, on the ground that her second marriage was illegal and her right to the pension was not determined thereby: *Held*, however, that by promoting said suit and procuring a decree which in effect affirmed the validity of her marriage while declaring its dissolution, the claimant has rendered the objection of illegality of the marriage unavailable in support of her claim, so long as that decree stands unvacated or judicially unimpeached. *Atty. Gen. Williams*, 14 Op., 220.

(a) When certificate of disability estops denial of facts stated therein.

When an officer applies for and receives a certificate of disability to accompany his resignation and forwards the same with his resignation, he is presumed to know the facts therein stated and is estopped from denying their correctness many years afterwards, except upon evidence most positive and conclusive. *William S. Bradshaw* (Asst. Sec. Hawkins), 1 P. D., 239; *Henry W. Carpenter* (Asst. Sec. Hawkins), 2 P. D., 230; *Charles G. Lewis* (Asst. Sec. Bussey), 4 P. D., 328.

(b) Muster and discharge estop denial of enlistment.

Muster presupposes enlistment, and the Government is estopped to deny enlistment where regular muster and discharge are shown. *Cornelius Warren* (Asst. Sec. Hawkins), 2 P. D., 278.

(c) Submitting to special examination without protest estops, when.

The claimant having been present at and expressed himself satisfied with the examination and the manner in which it was conducted, and having declined or neglected to cross-examine the witness then testifying adversely to him, is estopped from now attacking the adverse official record, supported by the testimony of said witness, the officer who made the record. *Henry Halstead* (Asst. Sec. Hawkins), 2 P. D., 221.

See also SPECIAL ACT.

18. Expert.

Upon the question of casualty the opinions of experts are evidence, but they do not constitute either exclusive or conclusive proof, and the question is to be judged by the real facts, like any other matter of evidence. *Atty. Gen. Oushing*, 7 Op., 149.

19. Extra pay—act of January 29, 1887.

A grant of extra pay made to a soldier under the acts of July 19, 1848, and February 19, 1849, can have no weight in determining his widow's right to pension under the act of January 29, 1887, as the same service is not required by these acts. *Widow of John Quinn* (Asst. Sec. Hawkins), 2 P. D., 248.

See also SUBTITLE BOUNTY LAND, ante.

20. Indigence—under act of May 1, 1820.

Under the act of May 1, 1820, supplementing the act of March 18, 1818, the schedule of property therein mentioned is the test of an applicant's indigence, and the relief given by the last-mentioned act is to be continued in every case in which the schedule shall exhibit proof of such indigence, that the income of the property is inadequate to the support of the applicant. *Atty. Gen. Wirt*, 1 Op., 356.

21. Insurance, statements as to disability in application for.

The fact a pensioner stated in an application for life insurance that he was not suffering from any disability is not a bar to continuance of his pension if it be shown that his pensioned disability actually continues. *John W. Sanderson* (Actg. Sec. Cowen), 3 P. D. (o. s.), 67.

The soldier having, within five months next preceding his death, and many years subsequent to his military service, been medically examined for insurance and accepted, and the physician who then examined him and had known him for four years prior thereto having stated in a letter to the insurance company immediately after the soldier's death that he had always considered him a healthy man prior to and for about a month after said examination, it is held death was not due to any disease contracted in service, the records furnishing no evidence of disability. *Widow of George H. Livezey* (Asst. Sec. Hawkins), 2 P. D., 260.

22. Judgments of courts.

The judgment and findings of a court of competent jurisdiction as to the existence of the material status between parties, upon the trial of a suit involving said relation, will be accepted by the Department as conclusive. *Widow of Olmstead Breckenridge* (Asst. Sec. Bussey), 3 P. D., 5.

23. "**Killed in battle,**" proof of.

Record, such as "Killed at Grovdon (Groveton), August 30, 1862," is not sufficient to prove that soldier was killed in battle, *Widow of David B. Webber* (Actg. Sec. Otto,) 5 L. B. P., 200.

24. **Lay testimony unsupported by record or medical evidence.**

Lay testimony, unsupported by the record or by direct medical evidence, and dated long after discharge, can not be accepted as proof of incurrence of the alleged disability in the service. *Andrew J. McIntire* (Asst. Sec. Hawkins), 1 P. D., 20.

Lay testimony, given twenty years after the alleged incurrence of a disability, and unsupported by record or medical testimony, will not establish a claim. *John W. Dodge* (Asst. Sec. Hawkins), 1 P. D., 211.

Lay testimony, when unsupported by the record or by direct medical evidence, and which is given years after claimant's discharge, can not be accepted as proof of incurrence of alleged disability in the service. Citing *Andrew J. McIntire*, 1 P. D., 20. *Joseph Hess* (Asst. Sec. Hawkins), 1 P. D., 255.

Lay testimony, when unsupported by the record or by direct medical evidence, and which is dated years after claimant's discharge, can not be accepted as proof of the incurrence of the alleged disability in the service. *Franz Fallada* (Asst. Sec. Hawkins), 1 P. D., 273.

In the absence of a record or of medical evidence showing the incurrence of an alleged disability in the service and line of duty, or its existence and treatment either in the service or at date of discharge, and where, also, there is a lack of testimony from any of claimant's commissioned officers or from disinterested comrades to establish claimant's allegation, the claim should be rejected. *Tobias Baney* (Asst. Sec. Hawkins), 1 P. D., 342.

Lay testimony, adduced long after claimant's discharge, must be supported by medical evidence, or by the record, in order to establish the origin of his alleged disability in first term of service. *Wesley W. Taylor* (Asst. Sec. Hawkins), 1 P. D., 359.

The testimony given by comrades alone many years after discharge, and which is vague and uncertain in its averments and unsupported by record or medical evidence, is insufficient to establish service origin. Citing *Andrew J. McIntire*, 1 P. D., 20; *John W. Dodge*, *ibid.*, 211; *Franz Fallada*, *ibid.*, 273. *Arad P. Brown* (Asst. Sec. Hawkins), 2 P. D., 88.

Lay testimony, when unsupported by the record or by direct medical evidence, and which is dated years after claimant's

24. Lay testimony unsupported by record or medical evidence—
Continued.

discharge, can not be accepted as proof of service origin. Quoting Andrew J. McIntire, 1 P. D., 20; Franz Fallada, *ibid.*, 273. *Widow of Henry Woerheide* (Asst. Sec. Hawkins), 2 P. D., 146.

Lay testimony, unsupported by record or direct medical evidence, and dated years after discharge, is not sufficient to prove service origin. Citing Arad P. Brown, 2 P. D., 88. *James Scanlin* (Asst. Sec. Hawkins), 2 P. D., 148.

Lay testimony, unsupported by record or medical evidence, and dated years after discharge, can not be accepted as proof of incurrence in service. Citing Andrew J. McIntire, 1 P. D., 20; Joseph Hess, *ibid.*, 255; Arad P. Brown, 2 P. D., 88. *Levi Reeves* (Asst. Sec. Hawkins), 2 P. D., 177.

The Department lays it down as a general rule that in old cases lay testimony, when unsupported by the record and by medical evidence, is insufficient to establish incurrence. Citing Henry W. Carpenter, 2 P. D., 230, and cases therein cited. *Widow of Francis O. Miller* (Asst. Sec. Hawkins), 2 P. D., 214.

Where the testimony presented to prove service origin rests merely upon the appearance and statements of the soldier and not upon personal knowledge of the facts as to his alleged disability, there is no record or medical evidence of the disability in service, claim was not filed until many years after discharge, and soldier, thirteen years after discharge, passed a medical examination for insurance, the case comes within the rule announced in Arad P. Brown, 2 P. D., 88. *Widow of Henry H. Waters* (Asst. Sec. Hawkins), 2 P. D., 227.

Lay testimony produced years after discharge can not be accepted in proof of incurrence when unsupported by either record or medical evidence. Citing Andrew J. McIntire, 1 P. D., 29; John W. Dodge, *ibid.*, 211; Franz Fallada, *ibid.*, 273; Arad P. Brown, 2 P. D., 88; Annie M. Waters, *ibid.*, 227. *Henry W. Carpenter* (Asst. Sec. Hawkins), 2 P. D., 230.

Where there is no record or medical evidence to show the existence of the alleged disability in the service, and the claimant fails to show the existence of a pensionable disability due to the service, the lay testimony alone, furnished over twenty years subsequent to the alleged incurrence, is insufficient to support claimant's declaration. Citing Albert Worthley, 2 P. D., 212; Mary Farrar, *ibid.*, 189; Arad P. Brown, *ibid.*, 88; Fritz Mueller, *ibid.*, 192; Levi Reeves, *ibid.*, 177. *Jeremiah Everly* (Asst. Sec. Hawkins), 2 P. D., 241.

There being no record of existence in service or at discharge, lay testimony furnished over twenty years subsequent to the

24. Lay testimony unsupported by record or medical evidence—
Continued.

alleged incurrence, can not be accepted as satisfactorily establishing origin in service. Citing Albert T. Chapin, 2 P. D., 254; Henry W. Carpenter, *ibid.*, 230; Andrew J. McIntire, 1 P. D., 20; John W. Dodge, *ibid.*, 211; Franz Fallada, *ibid.*, 273; Arad P. Brown, 2 P. D., 88; Annie Waters, *ibid.*, 227. *Henry Helman* (Asst. Sec. Hawkins), 2 P. D., 344.

Lay testimony filed many years subsequent to the alleged incurrence, when unsupported by record or medical evidence, is insufficient to prove incurrence. Citing Levi Reeves, 2 P. D., 177; Arad P. Brown, *ibid.*, 88. *Paul Pfau* (Asst. Sec. Hawkins), 2 P. D., 373.

Lay testimony, when unsupported by the record or by medical evidence, and which is dated years after claimant's discharge, can not be accepted as proof of the incurrence of the alleged disability in the service. *Alexander Gillespie* (Asst. Sec. Bussey), 3 P. D., 23.

(a) **When insufficient to prove origin of insanity.**

Insanity being one of the most obscure and occult diseases, the incurrence of it is difficult to determine, and lay testimony, unsupported by medical evidence or by the record, can not be accepted as establishing the origin of it in the service. *Samuel D. Fisher* (Asst. Sec. Hawkins), 1 P. D., 297.

(b) **When sufficient to justify reversal of rejection.**

Where there is no record or medical evidence, and claimant has delayed over sixteen years to file a claim for pension, the evidence to justify a reversal of rejection of the claim should be strong and conclusive. Citing Tobias Baney, 1 P. D., 342; John W. Dodge, *ibid.*, 211. *Levi Reeves* (Asst. Sec. Hawkins), 2 P. D., 177.

(c) **In claim for restoration.**

Where a soldier claims for a disability of which there is no hospital record, no medical evidence, and evidence of incurrence is weak, and testimony as to prior unsoundness conflicting, claimant's reputation for truthfulness being bad: *Held*, Not a case for restoration. *Reuben Wirtz* (Asst. Sec. Hawkins), 1 P. D., 304.

(d) **Where probable cause of disability subsequent to service is shown.**

Where there is no record or medical and but meager other evidence as to alleged existence during service of a disability, and a sufficient and adequate cause of the present disability is shown positively to have occurred subsequent to discharge, the latter is presumed to have been the cause of such disability and rejection of the claim is affirmed. *George W. Saunders* (Asst. Sec. Hawkins), 2 P. D., 11.

24. Lay testimony unsupported by record or medical evidence—
Continued.

(c) **Where there is record of another than alleged cause.**

Claimant was pensioned for amputation of right forearm, result of gunshot wound received in the war with Mexico, and claimed increase on account of gunshot wound of right shoulder, alleged to have been received at the same time and place. There is record evidence of the wound of arm, but no mention is made of the wound of shoulder, and it is held that the testimony of two comrades is not sufficient to establish incurrence of wound of shoulder in the service and line of duty. *Thomas Graves* (Sec. Schurz), 6 P. D. (o. s.), 327.

25. Line of duty.

Held, Claim was properly suspended until satisfactory proof that disability was contracted in line of duty, as well as in service, should be made. *Widow of John M. Call* (Asst. Sec. Otto), 5 L. B. P., 145.

Where soldier claims pension on account of wound received May 24, 1864, and this allegation is sustained by the record as to fact of wound, although he is reported as having joined the company August 15, 1864, there being no corroborative testimony: *Held*, That proof was insufficient to show incurrence in line of duty. *Eugene Dechaine* (Sec. Schurz), 6 P. D. (o. s.), 331.

Proof of origin of disability in line of duty is essential to secure favorable action in invalid claims. *Leslie R. Courson* (Sec. Schurz), 6 P. D. (o. s.), 415.

26. Marriage—parol evidence.

Parol testimony is insufficient to show marriage prior to the treaty of peace of February 17, 1815, in order to give title under section 4738, Revised Statutes, on account of service in the war of 1812. *Rebecca Collins* (Sec. Schurz), 5 P. D. (o. s.), 5.

27. Medical—not always indispensable.

Medical evidence of treatment while in service is not always indispensable. *Lorenzo D. Kenney* (Sec. Chandler), 3 P. D. (o. s.), 93.

When claim for pension is based on rheumatism incurred while a prisoner of war, and the fact appears that the soldier for eleven months immediately preceding his discharge was in rebel prison, other than medical testimony should be accepted to show condition at discharge and continuance of disability, and the origin of the disease in line of duty should be accepted. *Reinhard Frank* (Sec. Schurz), 5 P. D. (o. s.), 358.

27. Medical—not always indispensable—Continued.

Where claim for pension is based upon hernia, not sustained by the record, medical testimony as to the origin of the same should be produced in every case of this nature in which it can be obtained, but it is not indispensable for the establishment of the claim. *George Huddleston* (Sec. Schurz), 5 P. D. (o. s.), 361.

It is not essential that the existence from discharge of a disease contracted in the service be proved by medical evidence. *Squire Pine* (Sec. Schurz), 6 P. D. (o. s.), 230.

See SUBTITLE: LAY TESTIMONY.

(a) When requisite.

To establish the origin and continuance of chronic diarrhea, medical evidence as to existence and treatment ought to be presented. *William P. Innes* (Asst. Sec. Hawkins), 1 P. D., 19.

In cases involving an obscure disease, testimony not medical can not be regarded as other than hearsay. *Ibid.*

Where claimant fails to present medical testimony showing treatment either at the time the alleged disability was incurred, or during the remainder of his service, and he fails also to prove by competent medical testimony treatment for alleged disease of heart until years after his discharge: *Held*, The rejection of claim was proper. *Jacob S. Stewart* (Asst. Sec. Hawkins), 1 P. D., 340.

28. Medical referees, opinions of.

Where the claimant alleges to have been afflicted with tumors of side a short time after enlistment, but continued on active duty for more than two years thereafter, with no record of disability, in the absence of any cause to which it may reasonably be attributed, the medical opinion that the tumors were in no way connected with and were not the result of his military service is approved. *Justus C. Bowles* (Sec. Schurz), 6 P. D. (o. s.), 201.

Where the resignation of an officer is based upon declining health and urgent business at home, claim for inflammatory rheumatism, sustained by testimony tending to show disease from typhomalarial and swamp fever for a period of six weeks subsequent to discharge, and upon recovery therefrom, two months from date of discharge, was afflicted with rheumatism: *Held*, That the opinion of the medical referee that the disease (rheumatism) "can not be referred to his service through fever," is sufficient ground for rejection. *Louis Braun* (Sec. Schurz), 6 P. D. (o. s.), 322.

28. Medical referee, opinions of—Continued.

Where the weight of the testimony on file is overwhelmingly in favor of the claim, and against the opinion of the Medical Referee, the claim should be admitted. *Widow of James Shuttleworth* (Asst. Sec. Bussey), 3 P. D., 50.

(a) Conflicting opinions of different medical referees.

Where two conflicting opinions have been given by two Medical Referees as to the cause of soldier's death, that opinion which is supported by a hospital record will be accepted rather than the one founded on parol testimony. *Bridget Riordan* (Asst. Sec. Hawkins), 1 P. D., 45.

See also MEDICAL REFEREE; MEDICAL QUESTIONS.

29. New disability—presumption is adverse.

Failure to allege in original declaration certain disabilities which are afterwards alleged as "new disabilities," raises the strong legal presumption that such disabilities did not exist at the filing of the original declaration. Citing *Widow of John L. Wright*, 2 P. D., 253. *Paul Pfau* (Asst. Sec. Hawkins), 2 P. D., 373.

The Department, upon consideration of claim for new disability, holds that the hospital record, made during service, is presumed to be correct as showing all the diseases or disabilities and likewise all the treatment which claimant had during the service; and where claimant, years after discharge, alleges a disease or other disability of which his hospital record contains no mention, and of which also there was no evidence at discharge, the presumption is that said disease or disability was not incurred in the service, but subsequently to his discharge, and therefore it is not pensionable. *Alexander Gillespie* (Asst. Sec. Bussey), 3 P. D., 23.

Reconsidered and adhered to (*ibid.*), 6 P. D., 36, 54.

The Department reaffirms the ruling in the case of *Alexander Gillespie*, with reference to claims for new disabilities, that "the hospital record made during service is presumed to be correct, as showing all the diseases or disabilities and likewise all the treatment which claimant had during the service; and where claimant, years after discharge, alleges a disease or disability of which his hospital record contains no mention, and of which also there was no evidence at discharge, the presumption is that said disease or disability was not incurred in the service, but subsequently to his discharge, and therefore it is not pensionable." *James B. Eddings* (Asst. Sec. Bussey), 5 P. D., 181.

Reconsidered and adhered to (*ibid.*), 6 P. D., 36, 54.

29. New disability—presumption is adverse—Continued.**(a) Lay testimony, when insufficient to overcome presumption.**

A soldier's widow having alleged his death was due to rheumatism contracted in service, it was held that as the soldier had failed, in his original claim for invalid pension, to allege rheumatism as a disability, or furnish any evidence of its existence, it is presumed that said disease did not exist in service or result therefrom; and the presumption is so strong it is not overcome by the testimony, furnished years subsequent to service, of officers, comrades, and neighbors, to the effect that rheumatism existed in service and immediately subsequent thereto, such testimony being unsupported by record or medical evidence. Citing *Ruth L. Miller*, 2 P. D., 214. *Widow of John L. Wright* (Asst. Sec. Hawkins), 2 P. D., 253.

(b) Above rule modified.

Where a soldier failed in his original declaration to allege rheumatism as a disability, and failed also to furnish the Department with evidence of its existence during his lifetime, the presumption arises that said disease did not exist in the service and did not result therefrom; but this presumption, though strong, may be overcome and outweighed by testimony of officers, comrades, and neighbors, though unsupported by either record or medical evidence as to the existence of rheumatism either in the service or immediately thereafter. *s. c.* (Asst. Sec. Bussey), 3 P. D., 191.

Whenever, in a claim for increase of pension under the general law, an applicant, after long and unexplained silence, alleges a new disability of which there is neither record nor medical evidence, the adverse presumption arising from the absence of such evidence is open to rebuttal by the testimony of officers, comrades, and neighbors; but such presumption is not outweighed by the mere recital under oath of assertions made long since by the soldier himself or by general and vague statements of the witnesses, and can be overcome only by direct and positive proof of incurrence and existence, or by satisfactory evidence as to facts and circumstances from which said incurrence and existence are to be naturally, fairly, and reasonably inferred. *Thomas H. Strange* (Asst. Sec. Reynolds), 7 P. D., 36; *David Kiley* (ibid.), 8 P. D., —.

30. Newspaper accounts.

A newspaper account of a person's death is not admissible in evidence in proving the fact of death. *Widow of Samuel Fulmer* (Asst. Sec. Bussey), 6 P. D., 172.

31. Obscure diseases or causes.

AN applicant for pension for disability from an obscure disease can not be expected in all cases to assign correctly the cause or causes from which his disability originated. The evidence presented in such cases may be sufficient to show the incurrence in the line of duty in the service of the disability for which pension is claimed without proving the particular cause or the nature of the disease from which the disability originated, but evidence on these points should be furnished when it is practicable to do so. *James H. Shepard* (Sec. Teller), 13 P. D. (o. s.), 311.

When the evidence presented by a claimant is sufficient to satisfy the mind of a candid and impartial person that a pensionable disability from some obscure cause (such as rheumatism, neuralgia, myalgia, or angina pectoris) exists, although no physical signs of it can be discovered by the examining surgeons, pension should be allowed at a rate proportionate to the degree of disability proved. *John Douglass* (Sec. Teller), 14 P. D. (o. s.), 385.

See **DISABILITY** (Degree of).

(a) Epilepsy.

Epilepsy is a disease of a most obscure nature, and the best medical authority, as well as common experience, teaches that it is almost impossible to detect its existence, except in its most advanced stages, unless the person afflicted is seen in a convulsion incident to the disease, or very soon thereafter; and an official contemporaneous record, going to show the existence of the disease prior to enlistment, is taken as fully establishing the facts therein stated, unless fraud or mistake be apparent upon the face of said record. *James P. Depew* (Asst. Sec. Hawkins), 1 P. D., 283.

(b) Insanity.

See **SUBTITLE: LAY TESTIMONY.**

32. Order 192.

Claim for increase under the general law and for pension under the act of June 27, 1890. The first was rejected on the ground of no increase, the second on the ground of no benefit. The new evidence filed in the increase claim the Bureau refused to consider because of order No. 192: *Held*, That the rejection in both claims was proper under the medical examination made at the time, but order No. 192 had no bearing on the evidence filed for reopening in the increase claim, as the rejection was entered and letter of notification mailed before the order was promulgated on February 24, 1893. The order

32. Order 192—Continued.

could not create a limitation, because it was not available as notice to claimants or attorneys until that date. *James Baker* (Asst. Sec. Reynolds), 7 P. D., 485.

33. Origin.

See SUBTITLE: SUFFICIENCY AND INSUFFICIENCY.

34. Parol—admissible to prove term, but not fact, of service.

Parol testimony can be received to determine the "term of service," but not as "proof of service itself," which must be shown by the record; and as the record in this case shows Twitchell performed the service, that fact can not be contradicted by parol testimony. *Jason Millard, substitute for Uriel Twitchell* (Sec. McClelland), 4 L. B. P., 301; (Sec. Thompson), *ibid.*, 311.

The existence of such an organization as South Cumberland Battalion, Kentucky State Guards, and the fact that such organization was in the service of the United States, can not be established by ex parte affidavits unsupported by a record of any kind. *Alvin West* (Asst. Sec. Reynolds), 7 P. D., 74.

(a) In absence of any record, is sufficient, under act of July 27, 1892.

Where the Government has neglected to make or keep any record of a soldier's enlistment, service, or discharge, the soldier should be permitted, under section 3 of the act of July 27, 1892, to establish these matters by the best evidence obtainable. *Esther S. Williams, widow* (Asst. Sec. Reynolds), 7 P. D., 327.

(b) Written discharge, may be sufficient to prove service.

A written discharge issued by the proper officer, if corroborated by parol evidence as to the fact of service, might be sufficient to establish such fact in the absence of a record thereof; but if such evidence is not produced, the uncertain evidence of ex parte affidavits is insufficient. *Nicholas Underhill* (Sec. C. B. Smith), 5 L. B. P., 20.

(c) Admissible to show individual when record shows company's service.

In both bounty-land and pension claims on account of service in the war of 1812, parol evidence of individual service is admissible only in case there is a record of the organization in which such service was rendered; but this decision should not disturb prior adjudications in pension claims. *Francois Varian* (Sec. Chandler), 3 P. D. (o. s.), 89.

Parol evidence can not be admitted to establish a claim for pension or bounty land unless there is record evidence of the service of the organization to which the claimant belonged. *Harrison Welton* (Sec. Schurz), 5 P. D. (o. s.), 279.

30. Parol—Continued.**(d) Can not be accepted to contradict the record.**

Parol evidence, in war of 1812 claims, can not be accepted to contradict the record as to term of service. *Moses Ash* (Actg. Sec. Cowen), 2 P. D. (o. s.), 110.

Where soldier was discharged upon certificate of disability showing, from his own admissions, that he was not sound physically at the date of his enlistment, the testimony of an officer, in conflict with the hospital records, should not be accepted to show origin in line of duty. *Zenas Eldred* (Actg. Sec. Bell), 7 P. D. (o. s.), 208.

Adverse record, positive in its character, can not, after a lapse of years, be set aside by parol testimony. *Alexander Gilchrist* (Sec. Schurz), 7 P. D. (o. s.), 249.

(e) May be accepted, when record is not made on personal knowledge.

Adverse record made by a party who was not in a situation which would give him a personal knowledge of the facts may be controverted by other evidence, and the claim established by parol testimony, notwithstanding such adverse record. *Nelson Hendrick* (Sec. Schurz), 6 P. D. (o. s.), 466.

See also SUBTITLE: CERTIFICATE OF DISABILITY.

(f) As to substitute service.

Parol evidence may be received to show that soldier served as a substitute. *Matilda Bartlett* (Sec. Schurz), 5 P. D. (o. s.), 346.

Parol evidence is admissible to show that the principal rendered a part of the service, although the rolls indicate that the substitute served the entire period and received all the pay. *Nancy Riley* (Sec. Schurz), 6 P. D. (o. s.), 344.

(g) As to contracts of enlistment.

The contract of enlistment being partly in writing and partly not, the rule excluding all oral evidence of the subject-matter of a written contract is not applicable thereto. *Cornelius Warren* (Asst. Sec. Hawkins), 2 P. D., 278.

(h) As to fee agreements.

The genuineness of fee agreements attested under seal may not be impeached by the uncorroborated testimony of claimant that he did not sign any paper similar in description to said contracts. *Ned Grease* (Asst. Sec. Reynolds), 7 P. D., 423.

As to parol evidence see also BOUNTY LAND; RANK; RATING.

35. Presumptions—generally.

In all cases where the evidence in support of a claim is full and conclusive, something more positive than mere presumption is necessary to justify rejection. *Alexander Higgins* (Actg. Sec. Cowen), 2 P. D. (o. s.), 388.

(a) From lapse of time between service and death.

Where there is a long lapse of time between the period of service and the date of soldier's death, the presumption is strong that the fatal disease was contracted after discharge, to overcome which medical evidence, establishing a clear conviction of service origin, should be adduced. *Rebecca C. Meeker, widow* (Sec. C. B. Smith), 4 L. B. P., 520.

(b) Of enlistment.

Presumption of enlistment can not arise where admitted facts show there was no enlistment. *Mary E. Davis* (Asst. Sec. Reynolds), 7 P. D., 56.

(c) From official records, generally.

Written statements of an officer in the discharge of his official duty are attended with the presumption that his duty was properly performed. *Isaac Williamson* (Asst. Sec. Hawkins), 1 P. D., 7.

The record showing hospital treatment for rheumatism only, for sixteen days, there is good ground for inferring the rheumatism was comparatively slight; also, that he was not seriously afflicted with disease of spine and hernia as alleged; also, it is to be presumed said record is not only correct but embraces all the disabilities for which he was then treated. Citing *Ellis Luther*, 1 P. D., 387; *Bridget Riordan*, *ibid.*, 45; *Thomas Woods*, *ibid.*, 247; *William H. Hardy*, *ibid.*, 259. *Levi Connor* (Asst. Sec. Hawkins), 2 P. D., 1.

The written entries and statements of a public officer in the discharge of his official duties are attended with the legal presumption that his duty therein was properly performed. *Daniel Bidlake* (Asst. Sec. Bussey), 3 P. D., 27.

(d) From hospital records.

Where a claimant has a hospital record in the service showing the existence of and treatment for disabilities named and described, and, subsequently, upon returning from hospital to duty, served two years without either an additional hospital record or a complaint of the aforementioned, or of similar, disabilities while in the service, it is held that the hospital record should be construed as showing *all the diseases and all the treatment which claimant had during his army service*; and

35. Presumptions—Continued.**(d) From hospital records—Continued.**

evidences of the existence of certain disabilities fifteen years after claimant's discharge—disabilities neither described nor mentioned in his hospital record—will not be accepted as proving *inurrence* of the same *in the service*. The report of a competent board of surgeons, based upon an examination of claimant subsequent to his discharge, showing claimant's freedom from the disabilities alleged in his declaration, will be accepted as confirmatory of the aforesaid presumption and as proof justifying the rejection of the claim. *William H. Hardy* (Asst. Sec. Hawkins), 1 P. D., 259.

The record made of treatment in hospital during a soldier's service is presumed to be correct, and that he was not treated for any disease other than that stated in such record, until the contrary is clearly and satisfactorily established by competent evidence. *William M. Hutchins* (Asst. Sec. Hawkins), 1 P. D., 328.

The record made of treatment in hospital during service is presumed to be correct, as showing all the diseases and all the treatment which claimant had during his army service, and is weightier than parol evidence to the contrary. *Ellis Luther* (Asst. Sec. Hawkins), 1 P. D., 387; *Adam Cutts* (Asst. Sec. Hawkins), 2 P. D., 26.

A record of hospital treatment is presumptively correct, covering all the disabilities for which the soldier was treated; and the absence in such record of newly alleged disabilities raises the presumption that the soldier was free from them while under hospital treatment. *Thomas J. Irwin* (Asst. Sec. Hawkins), 1 P. D., 425.

Where claimant has a hospital record in the service, the presumption is that said record embraced *all the treatment* which claimant received and all the *disabilities* for which he was treated in said hospital; and "this presumption will obtain until the contrary is clearly and satisfactorily shown by competent evidence." *Gottlieb Unger* (Asst. Sec. Hawkins), 1 P. D., 439.

A medical record is presumed to show all the diseases and all the treatment had during service, and this presumption obtains until the contrary is clearly and satisfactorily established by competent evidence. Citing *Ellis Luther*, 1 P. D., 387. *Arad P. Brown* (Asst. Sec. Hawkins), 2 P. D., 88.

It must be presumed that the record as to treatment and disability shows all the diseases and all the treatment which the soldier had during his army service, and the presumption

35. Presumptions—Continued.**(d) From hospital records—Continued.**

that no other disease was treated will obtain until the contrary is clearly and satisfactorily established by competent evidence. Citing Ellis Luther, 1 P. D., 387. *Joseph D. Sawyer* (Asst. Sec. Hawkins), 2 P. D., 122.

When a claimant has a hospital record in the service, the presumption is such record embraces all the treatment he received and all disabilities for which he was treated in such hospital, and this presumption obtains until the contrary is clearly and satisfactorily shown by competent evidence. Citing Gottlieb Unger, 1 P. D., 439; Thomas J. Irwin, *ibid.*, 425; John W. Dalton, *ibid.*, 450. *Daniel M. Redding* (Asst. Sec. Hawkins), 2 P. D., 167.

Hospital records and certificates of disability are presumed to state the facts, and all the material facts, as to diseases or wounds. Citing William H. Hardy, 1 P. D., 259; Henry Halstead, 2 P. D., 221. *Henry W. Carpenter* (Asst. Sec. Hawkins), 2 P. D., 230.

The rule is reaffirmed that "the record made of treatment in hospital during service is presumed to be correct, as showing all the diseases and all the treatment which claimant had during army service; and it is further to be presumed that he was not treated for any disease other than that therein stated; and these presumptions will obtain until the contrary is clearly and satisfactorily established by competent evidence." Quoting Ellis Luther, 1 P. D., 387. *Henry Smith* (Asst. Sec. Hawkins), 2 P. D., 358.

The presumptions arising from a hospital record showing treatment for different diseases from those alleged as a basis for pension, about the same time that the incurrence of the alleged pensionable causes is asserted, and the entire failure of said record to mention, or to furnish any evidence of the existence, or as to the treatment, of said disabilities on account of which pension is claimed, are strongly adverse, and of such weight that they can be overcome only by direct, positive, and satisfactory evidence. Citing Ellis Luther, 1 P. D., 387. *Minors of Julius F. Mabe* (Asst. Sec. Hawkins), 2 P. D., 381.

(e) Of origin, where disability appears soon after discharge.

Where the preponderating evidence shows that claimant was in good health at the date of enlistment, and at the date of discharge he was laboring under serious disability, and at or soon after discharge suffered from severe pain in the head, and, without other cause to account for its origin, blindness ensued,

35. **Presumptions**—Continued.(e) **Of origin, where disability appears soon after discharge**—Continued.

the presumption is that blindness (the alleged disability) was due to the service. *Cyphert v. P. Gillett* (Asst. Sec. Hawkins), 1 P. D., 270.

Reconsidered and adhered to (*ibid.*), 2 P. D., 74.

Claimant was treated for rheumatism and affection of heart within a month from discharge, and disease of heart being reported by a board of surgeons in 1882, it is held that the responsibility of the service for both diseases is sufficiently probable. *Heinrich Schoening* (Asst. Sec. Bussey), 3 P. D., 162.

(f) **Of line of duty, when service origin is shown.**

It is according to public policy to presume in favor of the service where the line of duty enters potentially into the causes of disability or death, although it be not certainly provable that it was the exclusive or predominant cause. *Atty. Gen. Cushing*, 7 Op., 149.

A claimant need not prove the precise time when an injury was received and what he was engaged in at that particular time, but the presumption of law is that, until the contrary is shown, every person engaged in the public service performs his duty, and a soldier is in line of duty when he is actually conforming to the regulations of the Army and the orders of his superior officers. *Nathaniel Cook* (Sec. C. B. Smith), 5 L. B. P., 118.

Where it is proved that an applicant for pension was sound when he entered the service and disabled when discharged, a slight showing of facts is often sufficient to justify the inference that the disability was contracted in the line of duty, provided it is not opposed by anything in the evidence or in the nature of the disability itself. Origin of rupture is accepted in this case under the circumstances shown, there being evidence tending to support the allegations as to time, place, and manner of incurrence. *Reuben Moyer* (Sec. Teller), 13 P. D. (o. s.), 577.

Where there is a hospital record showing the incurrence, existence, and treatment of a pensionable injury in the service, the origin of which, in the line of duty, is claimed by soldier, there being no evidence adverse to such claim, the presumption is that said injury was incurred in the line of duty, as alleged, and as indicated by the hospital record. *Henry Smith* (Asst. Sec. Hawkins), 2 P. D., 358.

Where a disability is alleged to be due to a disease that is reasonably chargeable to the service, origin in the line of duty should be presumed, provided there is no evidence adverse to

35. Presumptions—Continued.**(f) Of line of duty when service origin is shown—Continued.**

such origin, and the existence of the disease in the service is satisfactorily shown. *William W. Meyer* (Asst. Sec. Bussey), 3 P. D., 246.

The origin of a disability in the line of duty will be assumed where soundness at and prior to enlistment is proved, the existence of the disability in the service is shown, and there appears no testimony adverse to claimant's allegation, the circumstantial evidence warranting the conclusion that claimant's statement is true. *Peter N. F. Von Otterndorf* (Asst. Sec. Bussey), 3 P. D., 341.

(g) Of soundness at enlistment.

The fact of enlistment warrants the presumption that the soldier was then in health sufficient to perform military duty, and having been discharged for disability, such disability should be presumed to have been incurred in line of duty, although the certificate of disability upon which he was discharged does not specify the cause of such disability. *Nathaniel Cook* (Sec. C. B. Smith), 5 L. B. P., 118.

The fact that a person was accepted into the military service is, under ordinary circumstances, presumptive evidence that he was in sound health. It has been held, however, by the Department, that when anything appears in the examination of a claim which tends to rebut such presumption the facts of the case should be proved. It does not appear proper that the established practice in this respect should be disturbed. *Benjamin M. Bordine* (Sec. Teller), 9 P. D. (o. s.), 408.

It is not presumed that the soldier was a sound man because he was accepted into the service; but the service and disability being proved, it does not require much evidence to establish soundness at the time of enlistment, and it does not require as much evidence to establish that fact as to establish the fact of disability; nor does the fact that he had an attack of a venereal disease some time before enlistment raise any presumption he had it at enlistment. *David H. Wells* (Sec. Teller), 13 P. D. (o. s.), 335.

The presumption of law is in favor of claimant's soundness prior to enlistment in the service, but such presumption may be overcome by positive and direct testimony establishing the contrary. *James Bundy* (Asst. Sec. Hawkins), 1 P. D., 356.

The soldier is entitled to the presumption that he was sound at the time of enlistment. *Daniel M. Redding* (Asst. Sec. Hawkins), 2 P. D., 167.

35. Presumptions—Continued.**(g) Of soundness at enlistment—Continued.**

It being shown by the record that the soldier performed three years of active service prior to the appearance of the disability for which he was pensioned, and that he was accepted as sound, not only upon his first enlistment but upon his reenlistment as a veteran volunteer, during which second service his disability first appeared during service, as shown by the record and by the testimony of officers and comrades, the presumption of his prior soundness is so strong that under the rulings of the Department it can be overcome only by positive and conclusive evidence of prior unsoundness. *William J. Brooks* (Asst. Sec. Hawkins), 2 P. D., 269.

The fact that a soldier was, as shown by the record, on duty more than twelve successive months after enlistment, with no hospital record or medical treatment, renders conclusive the presumption of soundness at enlistment, there being nothing in the nature of the disability rendering its incurrence in service unreasonable or impracticable. Citing and approving ruling 55. *Daniel Dailey* (Asst. Sec. Bussey), 4 P. D., 337.

There being no evidence of any disease or disability prior to enlistment, the presumption of prior soundness should prevail. *Widow of Charles H. Noble* (Asst. Sec. Bussey), 6 P. D., 268.

The law contemplates that a soldier shall be subjected to a physical examination at the time of his enlistment to ascertain his fitness for the service. When such examination has been omitted, the presumption that he was free from disability at enlistment loses much of its force. The record that a soldier had hernia while in the service, and the legal presumption of his soundness at enlistment, are not sufficient to prove that the hernia occurred as a result of the service. The time and place and circumstances of the origin of the disability should be proved, in order that its connection as a result with the service may be determined. *Andrew J. Willis* (Asst. Sec. Reynolds), 8 P. D., —.

The fact that the soldier had an attack of pleuro-pneumonia at the age of 16 years is not sufficient to rebut the presumption of prior soundness. *Catherine G. Smith* (Asst. Sec. Reynolds), 8 P. D., —.

(h) From fact of subsequent service.

Where a soldier reenlists, subsequent to the date of the contraction of his disability, and serves three years, being reported "present" during said period, the presumption is raised that the disability was not of a serious character during said period;

35. Presumptions—Continued.**(A) From fact of subsequent service—Continued.**

but strengthens the view that it has been progressive since the claim was originally granted. *Charles H. Friend* (Sec. Schurz), 6 P. D. (o. s.), 420.

Where disability is alleged to have been contracted during a first service, and soldier, having reenlisted and served through a second service, has no record of his alleged disabilities, and fails to prove their existence from the date of first discharge to 1877: *Held*, Claim is not established, and the second enlistment acts as an estoppel on claimant as to alleged disabilities contracted in the first service. *George W. Gemberling* (Asst. Sec. Hawkins), 1 P. D., 213.

A second enlistment raises the presumption that if any disability had been contracted in the first service the claimant had recovered from it; and this presumption will stand until clearly disproved. *John T. Taylor* (Asst. Sec. Hawkins), 1 P. D., 281.

Claimant's second enlistment raises the presumption that if any disability had been contracted in the first service claimant had recovered from it when he presented himself for enlistment a second time. This presumption will stand until clearly disproved. *John C. Brown* (Asst. Sec. Hawkins), 1 P. D., 321.

The soldier's second enlistment raises the presumption that if any disability was contracted in the first service he had recovered from it when he presented himself for enlistment in the second service. *William Banner* (Asst. Sec. Hawkins), 1 P. D., 346.

A second enlistment operates, ordinarily, as an estoppel on claimant whose disabilities are alleged to have been contracted in his first service. *Wesley W. Taylor* (Asst. Sec. Hawkins), 1 P. D., 359.

A second enlistment raises the presumption that the soldier had recovered from any disability incurred in the first service; and where the record of the second service shows no treatment for such disability, but that the soldier was "reported for duty on all the rolls," he is estopped from claiming pension on account of said disability. *John H. McLaughlin* (Asst. Sec. Hawkins), 2 P. D., 85.

Appellant's third enlistment and service raise the presumption that no pensionable degree of disability was incurred in his second service; which presumption is rendered conclusive by the absence of any testimony showing such a degree of disability at discharge or thereafter, and by the certificate of examination sixteen years after discharge, showing no disability

35. Presumptions—Continued.**(h) From fact of subsequent service—Continued.**

at that date. Citing John T. Taylor, 1 P. D., 281; George W. Gemberling, *ibid.*, 213; Wesley W. Taylor, *ibid.*, 359. *David G. Rummel* (Asst. Sec. Hawkins), 2 P. D., 91.

The fact claimant reenlisted after the incurrence of his alleged disability, served over a year, and filed no claim until after fifteen years raises a strong adverse presumption. Citing John H. McLaughlin, 2 P. D., 85; and the presumption will stand until clearly disproved. Citing David G. Rummel, *ibid.*, 91; John C. Brown, 1 P. D., 321. *Fritz Mueller* (Asst. Sec. Hawkins), 2 P. D., 192.

Second service, with no record of disability, raises the presumption that no pensionable degree of disability was incurred in the first service; and such presumption is rendered conclusive by the absence of any testimony showing such degree of disability at discharge. Citing John T. Taylor, 1 P. D., 281; George W. Gemberling, *ibid.*, 213; Wesley W. Taylor, *ibid.*, 359. *Everett Cawood* (Asst. Sec. Hawkins), 2 P. D., 197.

(i) Under section 4719, Revised Statutes.

The dropping of a pensioner's name from the roll under section 4719, Revised Statutes, raises no presumption that the same was wrongfully allowed, but, by the terms of the statute, the failure of the pensioner to claim his pension for three years is deemed presumptive evidence that such pension has legally terminated by reason of pensioner's death or recovery from the disability, and pensioner has no right to any pension after his failure to claim the same until such presumption has been rebutted by competent and sufficient evidence. *Patrick Welch, alias Connally* (Asst. Sec. Bussey), 3 P. D., 126.

The claimant in this case ceased to draw her pension as widow in 1870, and made no claim therefor until 1877. During this period she lived with one Wells, but denies that a marriage ever existed: *Held*, That under section 4719, Revised Statutes, her application for restoration is not accompanied by evidence satisfactorily accounting for the failure to claim such pension, and the presumption that a marriage took place prevails under said section, and the rejection is affirmed. *Margaret Nixon, widow* (Asst. Sec. Reynolds), 7 P. D., 171.

See also RESTORATION.

(j) Of legitimacy.

The evidence shows that the appellant was born during the wedlock of the soldier and mother of appellant: *Held*, That the presumption of legitimacy arising from the birth of a child

35. Presumptions—Continued.**(j) Of legitimacy—Continued.**

in wedlock may be rebutted by any legal evidence which tends to prove that the husband is not the father of the child. The evidence in this case is sufficient to raise a presumption that the claimant is not the child of the soldier. *Ida M. Downard, minor* (Asst. Sec. Reynolds), 7 P. D., 290.

(k) From age at enlistment.

No reasonable presumption adverse to a claim can be derived from the fact that the claimant was of an advanced age at the date of enlistment. Having accepted him at enlistment, the Government can not take advantage of that circumstance in adjudicating his claim for pension on account of a disability incurred in service. Overruling a prior decision herein. *William Willis* (Sec. Teller), 12 P. D. (o. s.), 296.

36. Prior soundness and unsoundness, generally.

Where record of the Navy Department shows that the disability for which the party was sent to hospital, and on account of which he claims a pension, was not due to the service and line of duty, mother's claim should be rejected. *Bridget Boyle* (Sec. Schurz), 7 P. D. (o. s.), 37.

37. Proof.

A claimant is not bound to prove his case beyond a reasonable doubt, but only by preponderance of proof, and not merely by the number of witnesses; and where thirty-five witnesses testify to prior soundness, who had better opportunities for observing the claimant's condition at that time than about one-fourth that number who testify as to prior unsoundness, and the records show incurrence in service of a disability and discharge therefor, it is held claim is proven; the burden of proving that such disability is due to some latent, preexisting defect being upon the Government, which has not adduced any proof thereof. *Horace S. Spear* (Sec. Teller), 12 P. D. (o. s.), 341.

38. Record of War Department.

A pension for disability may not be granted, under the established rules of practice, unless the claimant's testimony is corroborated by the records of the War or Treasury Department, unless sufficient reasons are given for the lack of such corroborative evidence. *Letter to Hon. PETER LITTLE, House of Representatives* (Sec. Calhoun), Pension Laws, etc. (1849), 91.

(a) Is not indispensable.

It being fully established that the claimant was sound at enlistment, but the only testimony as to service origin being that of the claimant's clerk in service, there being no record of

38. Record of War Department—Continued.

(a) Is not indispensable—Continued.

any disability therein, the absence of such evidence being reasonably accounted for by the position and duties of the claimant, and he being unable to procure the testimony of the surgeons who are alleged to have treated him in service, and being vouched for as a man of high character, claim should be allowed, notwithstanding the absence of record or medical evidence as to service origin. *Andrew C. Hewey* (Actg. Sec. Cowen), 2 P. D. (o. s.), 21.

Record or medical evidence is not indispensable in a pension claim, but claim may be allowed upon other evidence. *Lorenzo B. Kenney* (Sec. Chandler), 3 P. D. (o. s.), 93.

There is no established rule of the Department requiring record evidence or medical testimony in a claim, but the best obtainable evidence should be adduced. The circumstances surrounding each case renders it impracticable to adopt any general rule. *James I. Wolverton* (Sec. Schurz), 5 P. D. (o. s.), 489.

Medical and lay testimony, in the absence of record evidence, may be sufficient to establish the origin of alleged disabilities in the service and line of duty, and thereupon claims for pension may be allowed in the cases of a soldier and his widow. *Eliza J. Gilson, widow* (Asst. Sec. Bussey), 5 P. D., 103.

Neither record nor medical evidence of incurrence or treatment in service is absolutely essential to prove service origin; but an absence of such evidence should be satisfactorily accounted for, as a claim must be established by the best evidence of which the case in its nature is susceptible, and the absence of record or medical evidence showing existence of and treatment in the service for a disabling cause, alleged as a basis of pension, may, under certain circumstances, be a valid and legal ground for rejection. *John R. Jones* (Asst. Sec. Reynolds), 8 P. D., 304.

See also SUBTITLE: MEDICAL EVIDENCE.

(b) May not be questioned, but is conclusive.

It is not competent for this Department to question the sufficiency of the records of the War Department, and it is immaterial in what manner such records are made. It is, therefore, held in this case that the certificate of disability for discharge, stating discharge was by reason of hernia of eight years' standing, is not outweighed by the mass of evidence as to prior soundness. *Leopold Ricot* (Actg. Sec. Cowen), 3 P. D. (o. s.), 50.

38. Record of War Department—Continued.**(b) May not be questioned, but is conclusive—Continued.**

Claimant's husband was condemned in September, 1871, by a general court-martial, and sentenced to hard labor and to be dishonorably discharged. He was accidentally killed in 1873, while serving said sentence. The War Department reports that he was discharged in October, 1871, which report is accepted as correct, and the rejection of the widow's claim on the ground that soldier was not in the service when killed is affirmed. *Rachel A. Davis* (Sec. Schurz), 4 P. D. (o. s.), 127.

A determination of the commencement of service by the War Department from its records, after full consideration of the law and the facts, in any claim based upon service during or since the war of the rebellion, will be accepted by this Department as final. Citing *Wilson v. United States* (25 Court of Claims, 339); *United States v. Johnson* (124 U. S., 253), and *Same v. Moore* (95 U. S., 760). *George W. Hill* (Asst. Sec. Reynolds), 7 P. D., 235.

The rule that pay is coincident with and determines the period of service is vacated and set aside, and decisions affirmative thereof to that extent are overruled. Cases of *Ransom* and *Rogers* (5 P. D., 183, and 6 P. D., 170), respectively, considered in the connection. *Ibid.*

(c) Is not conclusive.

Record evidence is not conclusive as to origin of disease in service and line of duty. *Andrew J. Herroon* (Sec. Chandler), 4 P. D. (o. s.), 29.

An official contemporaneous record is the best evidence as to facts therein recited, and will generally be accepted by the Department as conclusive. It may, however, be shown by competent proof to have been erroneous, but this proof must be of the strongest character. *Stephen Thompson* (Asst. Sec. Reynolds), 7 P. D., 26.

(d) Changing record, evidence as to.

The sufficiency of evidence filed in the Pension Office for the purpose of changing the record of the War or Navy Department, as provided in section 4717, Revised Statutes, should not be passed upon by the Commissioner of Pensions, but he should forward such evidence to the proper Department for its consideration. *Willis A. Wolcott* (Actg. Sec. Cowen), 2 P. D. (o. s.), 390, 405.

38. Record of War Department—Continued.

(e) As to service, when required—act of July 4, 1864.

The act of July 27, 1868, does not repeal or modify that part of section 6 of the act of July 4, 1864, which requires satisfactory record evidence from the War Department in claims then on file which should not be prosecuted to a successful issue within three years from that date. *Robert M. Holt* (Sec. Cox), 6 L. B. P., 491.

Record evidence of service and of a wound or disease producing a disability or death is required by the provisions of section 6 of the act of July 4, 1864, and such evidence should be obtained, if practicable, in all instances, without regard to the period during which the claim has been pending, but the absence of it in a case *not* within said section would not necessarily be fatal, though in a case *within* said section such evidence is indispensable. *George G. Warringer* (Sec. Cox), 6 L. B. P., 532.

(f) Of other than alleged disability.

Testimony of the surgeon, given twenty years after the war, will not outweigh the official record made at the time showing that claimant was treated for another disability than the one alleged and relied upon in his claim. *Rodman E. Welch* (Asst. Sec. Hawkins), 1 P. D., 251.

Hospital record, making no mention of alleged disability, raises an adverse presumption. *William Waterbury*, 2 P. D., 53; *Levi Connor*, *ibid.*, 1; and *Arad P. Brown*, *ib.*, 88, followed. *Fritz Mueller* (Asst. Sec. Hawkins), 2 P. D., 192.

Where there is no hospital or other record of the existence of an alleged disability in the service, but a conclusive record of other disabilities for which claimant was treated, the mere existence of said disability, after the expiration of years subsequent to claimant's discharge, can not be accepted as the basis of a conclusive presumption that the alleged disability did originate and exist in the service. *Minors of William H. Nessle* (Asst. Sec. Bussey), 3 P. D., 195.

The quality of the evidence is more important than the multiplication of affidavits as to a given fact. *Ibid.*

(g) Adverse.

Adverse record made by the regimental surgeon, presumably in a position to know the facts, is sufficient ground for rejection when no sufficient evidence is filed to controvert such record. *John W. Carr* (Sec. Schurz), 6 P. D. (o. s.), 390.

Adverse record, where prior soundness is shown, with ten months' active service before any hospital treatment, and the

38. Record of War Department—Continued.**(g) Adverse—Continued.**

incurrence of the disability alleged is testified to by officers and comrades: *Held*, Sufficient proof to overthrow adverse record made without full knowledge of claimant's past condition. *John Bartow* (Asst. Sec. Hawkins), 1 P. D., 174.

(h) Casualty.

Where claimant alleges the incurrence of a pensionable wound in action, disabling him for duty, the statements of record should be taken as entitled to extraordinary weight, inasmuch as the casualties or losses incident to an engagement were required to be recorded and reported with accuracy in the service; and the most positive and conclusive evidence is required to establish the incurrence of an unrecorded or unreported injury in action, or to satisfactorily explain the absence of such a record. *James B. Rodman* (Asst. Sec. Hawkins), 1 P. D., 286.

(i) State v. United States.

The records of the Fourth Auditor's Office, showing the term of service in the war of 1812, can not be controverted by records of the adjutant-general of a State which were made up on affidavits of parties interested in obtaining bounty-land warrants. *Isaac Bacon* (Actg. Sec. Cowen), 1 P. D. (o. s.), 113.

39. Reduction.

The statement of the examining surgeon that he had committed an error in the biennial certificate, upon which the pension was reduced, considered in connection with the nature of the disease (disease of heart) and the history of the case, as afforded by medical certificates, may properly be accepted to prove that there was no decrease in the extent of the disability to warrant the reduction of the pension; and it was directed accordingly that the original rate be restored. *Henry Langenberg* (Actg. Sec. Bell), 9 P. D. (o. s.), 57.

40. Reimbursement.

Statement of claimant for reimbursement should be corroborated by the affidavits of two credible witnesses. *Elizabeth Wells* (Sec. Chandler), 4 P. D. (o. s.), 65.

41. Res gestæ.

Claimant's husband was pensioned for gunshot wound of leg. While he was sitting on a porch at his home he attempted to rise and in doing so fell, receiving injuries from which he

41. Res gestæ—Continued.

soon thereafter died. Immediately after the fall he was carried into his house, when, in response to inquiries, he declared that his leg gave way causing him to fall: *Held*, That soldier's statement as to what caused his fall was admissible as a part of the res gestæ. *Rebecca A. Maness, now Harris* (Asst. Sec. Reynolds), 7 P. D., 110.

See also SUBTITLE: ADMISSIONS AND STATEMENTS BY CLAIMANT.

42. Restoration—generally.

Where certificate of discharge shows the disability alleged was contracted in line of duty, and presumption of prior soundness raised by soldier's enlistment is strengthened by competent proof which remains un rebutted: *Held*, Appellant's name should be restored to pension roll. *Anson Howe* (Asst. Sec. Hawkins), 1 P. D., 198.

(a) Under section 4719, Revised Statutes.

In claims for restoration, where pensioner's name was dropped from the roll under section 4719, Revised Statutes, medical evidence covering the whole time for which pension is claimed is not required. *Abram Smith* (Actg. Sec. Bell), 6 P. D. (o. s.), 157.

43. Secondary.

See SUBTITLE: ALLEGATA ET PROBATA.

44. Special examiner's reports.

The mere report of a special agent (examiner), unsupported by any evidence, stating that a pensioner's disability from rheumatism has ceased, which report was rendered between one and two months after the report of the examining surgeons showing continuance in a pensionable degree of such disability, is not sufficient to overcome the report of said surgeons and warrant suspension of payment. *Nicholas Grensel* (Sec. Delano), 1 P. D. (o. s.), 399.

45. Sufficiency and insufficiency, generally.

A preponderance of evidence in claimant's favor, added to the medical referee's opinion, which sustains the claim, is sufficient to establish it. *James Dean* (Asst. Sec. Hawkins), 1 P. D., 96.

(a) As to service origin—cases where evidence is held insufficient.

In the absence of any record evidence in support of a claim, and in view of the fact that claimant did not allege contraction of his disability in the service until about eleven years

45. Sufficiency and insufficiency, generally—Continued.

(a) **As to service origin—cases where evidence is held insufficient—Cont'd.**

after his discharge therefrom, it is fair to infer that said disability was incurred since service. *Frank Fricke* (Sec. Delano), 2 P. D. (o. s.), 470.

The claimant alleges disease contracted in April, 1862, which averment is not sustained by the record, but on the contrary he is reported "present" on all rolls for more than two years, except when on a furlough in February, 1864; furnishing only the affidavits of comrades in support of his allegations, and the testimony of two laymen as to condition from discharge to September, 1867: *Held*, That the testimony is insufficient to establish the claim. *Silas Davis* (Sec. Schurz), 6 P. D. (o. s.), 265.

There being no record evidence in support of this claim, but the record showing, on the contrary, that the claimant was in desertion at the time of the alleged incurrence, and he having declared his inability to furnish the testimony of any commissioned officer, testimony of two comrades is not accepted as sufficient to prove the claim. *Michael Cushing* (Sec. Schurz), 8 P. D. (o. s.), 5.

Upon all the evidence in this case, rejection of the claim is affirmed, there being no record, medical or other competent evidence of service origin of alleged rheumatism. Adhering to former decision of February 4, 1887. *Richard L. Shelley* (Asst. Sec. Hawkins), 1 P. D., 132.

There being a record of rheumatism, but none of alleged disabling causes, nor any satisfactory evidence tending to show the existence at discharge or until two years after discharge of the latter causes, the service can not be held responsible for said causes in the absence of absolute proof of service origin. *Levi Connor* (Asst. Sec. Hawkins), 2 P. D., 1.

There being no record of alleged hernia, claimant's allegations and testimony being unsupported by that of his officers and comrades on special examination, he having subsequently reenlisted and having testified on special examination that he had no rupture when he returned home on furlough two years subsequent to the alleged time of incurrence of hernia, claim is not proven. *William Waterbury* (Asst. Sec. Hawkins), 2 P. D., 53.

There being no direct evidence as to alleged origin, the only favorable testimony being hearsay, and the claimant's allegations being wholly unsupported by proof, it is held service origin is not satisfactorily established. *Edgar Schroeders* (Asst. Sec. Hawkins), 2 P. D., 353.

45. Sufficiency and insufficiency, generally—Continued.**(b) Cases where evidence as to service origin is held sufficient.**

Claimant claimed pension on account of injury to spine and hips received about March, 1862. The record shows him treated in July for lumbago, and was discharged in August, 1862, for phthisis with hæmoptysis. In December, 1863, he was exempted from the draft on account of spinal irritation. Soundness at enlistment being shown and treatment for spine and hips and rheumatism in 1865, and since 1881, it is held that claim is established. Citing *Albert G. Hurst. Morgan Gandy* (Asst. Sec. Hawkins), 1 P. D., 158.

Prior soundness being established, and certificate of discharge for disability, with other strong evidence going to show the incurrence in service and line of duty of the disability alleged: *Held*, Claim is established. *William H. H. Stone* (Asst. Sec. Hawkins), 1 P. D., 182.

Prior soundness being shown, the testimony of claimant's brother officers that he received an injury at the battle alleged, and that he complained at the time of pain in his bowels and groin, and that subsequently during service he was found to be suffering from hernia which he claimed was the result of said injury, such testimony and claimant's statements are sufficient to establish incurrence in the service. *William B. Pierce* (Asst. Sec. Hawkins), 1 P. D., 206.

There being no evidence as to unsoundness of eyes prior to enlistment, and soldier being on active duty continuously for twenty months subsequent thereto, with but one attack of sickness, called breakbone or salt fever; all the witnesses uniting in ascribing claimant's blindness to the same cause, and that cause as originating under the same circumstances and at the same time; continuance from discharge of disease or injury of eyes being shown, and total blindness twelve years after discharge; and no other probable or possible cause for said blindness appearing, it is held service origin is satisfactorily proved. *James Edwards* (Asst. Sec. Hawkins), 2 P. D., 136.

Where the evidence to prove the incurrence of lumbago, which was admitted, is precisely the same as that adduced to prove injury to nose, it is both illogical and unjust to hold said evidence to be sufficient to establish the incurrence of one of said disabilities and not that of the other, both disabilities being alleged in the same declaration as having been incurred at the same time and under the same circumstances. *Thomas Grummitt* (Asst. Sec. Bussey), 3 P. D., 46.

45. Sufficiency and insufficiency, generally—Continued.**(c) Where no present disability is shown, claim not allowable.**

Where claimant's resignation was tendered, asking that it be considered "unconditional and immediate," with no allusion therein to any disability, and a recent medical examination fails to discover any disability from the cause alleged, the rejection of the claim was proper. *Amos Stroh* (Sec. Schurz), 6 P. D. (o. s.), 369.

Where there is no record or medical evidence of the incurrance of alleged diseases in the service and line of duty, and pensionable degree of disability is not shown to have existed since filing claim: *Held*, Rejection proper. *Henry H. Carothers* (Asst. Sec. Hawkins), 1 P. D., 228; *John Blair*, *ibid.*, 2 P. D., 183.

In the absence of affirmative evidence establishing origin of a disability in the service, and where the boards of examining surgeons report that claimant is not disabled in a pensionable degree, a claim will be rejected. *Daniel Bower* (Asst. Sec. Hawkins), 1 P. D., 257; *John Blair*, *ibid.*, 2 P. D., 183.

The absence of affirmative evidence establishing the origin of the alleged disability and its continuance since discharge, and the fact that the claimant is not now rated by the examining surgeons, justify rejection of the claim. *Leonard Nerreter* (Asst. Sec. Hawkins), 1 P. D., 67.

46. Vicious habits—under general law.

Where claimant based application for pension upon disease, there being no record of sickness in the service, and two reports of board of examining surgeons show "no disability from cause alleged," but find "respiration simulating asthma," attributed to alcoholic stimulants, the admissions of the claimant that his disease renders it necessary for him to use stimulants freely sufficiently shows that soldier was not disabled by reason of disease contracted in the service. *Peter B. Ives* (Sec. Schurz) 6 P. D. (o. s.), 404.

(a) Under section 2, act of June 27, 1890.

Where a claimant under section 2 of the act of June 27, 1890, can not furnish the testimony of persons having personal knowledge of the circumstances under which his disability was incurred, and there is nothing in the case to create a suspicion that it was caused by "vicious habits," his own affidavit setting forth the circumstances, together with the testimony of two credible witnesses who have known him from a time antedating the incurrance of the disability, showing that he was then, and has been during all of their acquaintance with him,

46. Vicious habits—Continued.

(a) **Under section 2, act of June 27, 1890—Continued.**

a man of good habits, will suffice, whether said disability is a result of injury or of disease. *John Martin* (Asst. Sec. Reynolds), 7 P. D., 578.

Where there are grounds for suspecting that the disability is a result of vicious habits, the kind and amount of evidence necessary to overcome that suspicion will vary according to the circumstances of the case. *Ibid.*

In general, where there is no apparent ground for suspecting vicious habits, and, so far as can be ascertained, claimant has always been a man of good habits and of good repute for credibility, the presumption should be in favor of the claim. *Ibid.*

47. Weight of.

When affiants, in a claim on special examination, deny all knowledge of the facts mentioned in their former affidavits, such affidavits will have no weight in the adjudication of the claim. *Elizabeth Schmelzfening* (Asst. Sec. Hawkins), 1 P. D., 81.

The only record being of treatment for venereal disease, such record not being impeached, but, on the contrary, corroborated by testimony as to the soldier's habits, and it being shown that subsequent to service he received, while engaged in a fracas, a wound in his chest, and was thereafter treated for hemorrhages, it is held rejection of claim for pension on account of lung disease was proper on the evidence; although there is positive evidence that soldier had a severe cold in service, was then treated therefor and for disease of lungs, and was disabled thereby at discharge. *Thomas Woods* (Asst. Sec. Hawkins), 1 P. D., 247.

Where soldier was drafted and mustered into the military service, but the record shows that within three months he was rejected for disabilities which existed prior to muster, and soldier died of one of said disabilities sixteen years thereafter, having made no application for pension, and there being no direct proof of incurrence in service: *Held*, That the testimony of witnesses not medical, that soldier was sound prior to enlistment, does not outweigh the record and the presumptions which naturally arise from such a state of facts. *Raxey A. Githens, widow* (Asst. Sec. Hawkins), 1 P. D., 250.

Where, in absence of record, the preponderating evidence shows the existence of an alleged disability prior to enlistment, said disability is not pensionable. *James E. Friel* (Asst. Sec. Hawkins), 1 P. D., 329.

47. **Weight of**—Continued.

The certificate of an examining surgeon stating that he treated the claimant prior to service for the disability alleged as the basis of pension outweighs the evidence presented tending to show origin in the service. *Walter James* (Asst. Sec. Hawkins), 1 P. D., 350.

The uncertain and conflicting testimony of a single witness whose memory of events is shown to be untrustworthy, and the impairment of whose mental faculties renders him not only unreliable but scarcely competent to testify at all, should not be permitted to overthrow the overwhelming weight of evidence in favor of prior soundness and of freedom from the disability alleged at the time of entering the service; it appearing the soldier was drafted, failed to report, was arrested and sent under guard to his command, and served for nine months before any record of sickness or disability appeared, and numerous witnesses having testified to his prior soundness. *George W. Barnes* (Asst. Sec. Hawkins), 2 P. D., 301.

It is an established rule of evidence that the testimony of any number of witnesses who are not shown to have been in a position to gain personal knowledge of the facts can not be accepted to outweigh and overcome the testimony of even a single credible and reliable witness who is shown to have occupied such a position. *Alfred P. Remick* (Asst. Sec. Bussey), 3 P. D., 131.

The certificate of disability for discharge and the certificate of a board of examining surgeons, made twenty-four years after discharge, stating that claimant's disability is the result of a compound fracture of leg received twelve years before enlistment, outweighs the statements of two unofficial surgeons that such disability was due to a sprain of service origin; following rule in *Rudolph M. Montgomery*, 3 P. D., 41; *Joseph M. Potter*, *ibid.*, 82. *Jesse Lovel* (Asst. Sec. Bussey), 3 P. D., 187.

A preponderance of medical and lay testimony, sustained by the certificates of examining surgeons, defeats the charge that claimant had defective vision prior to enlistment. When, upon credible evidence, a pension has been allowed for disease of eyes shown to be of service origin, the Department will accept additional medical and lay testimony showing that the disease was progressive and resulted in total blindness. *Jackson Martin* (Asst. Sec. Reynolds), 7 P. D., 265.

See also ABANDONMENT; ACCRUED PENSION (Reimbursement); ADULTEROUS COHABITATION; AID AND ATTENDANCE; APPEALS; ATTORNEYS; BOUNTY LAND; COMMENCEMENT; DEATH (Presumption of); DEATH CAUSE; DEPENDENT REL-

47. **Weight of**—Continued.

ATIVES; DISABILITY; DISLOYALTY; DIVORCE; DOUBLE PENSION; ELECTION; EXAMINATIONS (Special); FEE CONTRACTS; INCREASE; LINE OF DUTY; MARRIAGE; MEDICAL REFERENCE; NEW DISABILITIES; NURSES; ORIGIN; RECONSIDERATION; REMARRIAGE; REBATING; RESTORATION; SEQUENCE; SERVICE; SUSPENSION; WITNESSES.

EXAMINATIONS.1. **Medical, generally**—as to Commissioner's powers.

- (a) *Reexaminations.*
- (b) *Biennial.*
- (c) *Restoration claims.*
- (d) *Under act of July 14, 1892.*

2. **Special.**

- (a) *Further special examination.*

1. **Medical, generally**—as to Commissioner's powers.

Some discretion as to the propriety and as to the time of ordering medical examinations of claimants must be vested in the Commissioner of Pensions. *W. S. Cady* (Asst. Sec. Bussey), 5 P. D., 84.

Whenever a claimant shall have been ordered and appears before a board of examining surgeons for examination, all the members of such board shall participate in such examination, and no certificate from such board will be accepted which fails to show this fact, save only in cases where a claimant, on appearing and finding a less number of surgeons than the full board present, shall consent, in writing on such certificate, to be examined by the members of said board then present. *Byron A. Predmore* (Asst. Sec. Reynolds), 8 P. D., 165.

The secretary of the board shall certify on the back of the certificate the names of all the members of the board who were present and participating in such examination, and when a full board has participated in the examination, the certificate of the secretary of the board will suffice; but in case a full board is not present, the applicant may refuse to be examined, and appear at a later day before a full board. *Ibid.*

These rules shall take effect only from the first day of October, 1896, and are not intended to disturb cases heretofore adjudicated, in good faith, according to the practice heretofore existing in the Bureau of Pensions. *Ibid.*

(a) **Reexaminations.**

Reexamination of a claimant at his own expense is a matter wholly within the discretion of the Commissioner of Pensions. *Communication to Jacob T. Wright, in re David Harmon* (Sec. Delano), 7 L. B. P., 369.

1. Medical, generally—Continued.**(a) Reexaminations—Continued.**

Where a claim is rejected upon report of examining surgeon that no disability exists, the claimant has the right to furnish proof that the injury he claimed was received, resulted in the disease alleged, and that said disease has continued, and further medical examination should be ordered. *Samuel W. Tracy* (Sec. Schurz), 6 P. D. (o. s.), 227.

Action of Office is sustained declining further examination where claimant had, at four different times, by three different boards of examining surgeons, been thoroughly examined. *Alexander H. White* (Sec. Schurz), 6 P. D. (o. s.), 319.

Where rating has been fixed upon recent report of a competent board of examining surgeons, there appears to be no good reason for ordering a reexamination. *James Curran* (Sec. Schurz), 7 P. D. (o. s.), 147.

Where rejection of claim is based upon report of medical examination of remote date: *Held*, That while the adverse action may be proper, it would seem just that the claimant be allowed another examination, and if found disabled, that he have an opportunity to prove his claim. *Charles A. Doster* (Sec. Schurz), 7 P. D. (o. s.), 143.

(b) Biennial.

Biennial examinations are always necessary unless the pension certificate exempts therefrom. *Communication to Charles Watkins* (Sec. Cox), 7 L. B. P., 64.

Examining surgeons, at biennial examinations, should not furnish to pensioners or attorneys information relative to such examinations. *John Ryan and Bernard Reinwold* (Sec. Chandler), 3 P. D. (o. s.), 374.

The law requiring biennial examination was repealed June 21, 1879. See SUPPLEMENT B.

(c) Restoration claims.

The act of June 21, 1879, repealing the act requiring biennial examinations, did not repeal by implication the requirement for medical evidence in cases for restoration under section 4719, Revised Statutes. *Frank E. Pickett* (Asst. Sec. Bussey), 5 P. D., 65.

(d) Under act of July 14, 1892.

A medical examination to test the right of claimant to the benefit of the act of July 14, 1892, ought not to be ordered

1. **Medical, generally**—Continued.

(d) Under act of July 14, 1892—Continued.

until claimant himself has established a prima facie right to the benefit of said act. *Thomas J. Howren* (Asst. Sec. Reynolds), 8 P. D., 228.

See also CERTIFICATES (Of examination).

2. **Special**

It is not the purpose of a special examination to supply evidence which the claimant has failed or neglected to furnish. *Alida Cramer* (Asst. Sec. Hawkins), 1 P. D., 47.

In order to determine definitely parental dependence, the case is remanded for special examination. *Mary Ann Riley* (Asst. Sec. Reynolds), 7 P. D., 459.

The record showing the fact, only, of discharge, it is held that a special examination should be ordered to ascertain the date and cause of appellant's discharge. *Thomas Johnson* (Asst. Sec. Reynolds), 7 P. D., 491.

Where an investigation is instituted for the purpose of ascertaining whether a fraud has been perpetrated upon the Government in procuring a pension, the pensioner suspected of fraudulently procuring such pension is not entitled to notice of the time and place of taking evidence, nor has such pensioner or his attorney any right to inspect the evidence filed touching such fraud, nor to a copy thereof. *Pythia Ann Sullivan* (Asst. Sec. Reynolds), 7 P. D., 512.

No evidence whatever of origin of alleged disability having been filed, a prima facie case is not made out, and it is not the duty of the Bureau to hold a special examination in order to try to establish the claim. *William Strong* (Asst. Sec. Reynolds), 8 P. D., 292.

(a) **Further special examination.**

While a new examination, affording to claimant an opportunity to meet and cross-examine the witnesses, will be granted when the evidence obtained under a prior ex parte examination is material to the proper determination of the claim, yet no such new examination should be made where, from the nature of the case, it can have no effect on the ultimate decision; the facts presented in this case, by the claimant's own statements, being conclusive against the claim. *George Solomon* (Asst. Sec. Hawkins), 2 P. D., 29.

See also EVIDENCE (Burden of proof); NOTICE; RERATING.

EXAMINING SURGEONS.

See EVIDENCE (Certificates); EXAMINATIONS.

EXPERT.

See EVIDENCE.

FACE BRIEF.

A case which has no face brief, and nothing to show that final official action has been taken, except an abbreviated and indefinite indorsement upon the jacket, will be returned for proper briefing, in accordance with the established rules and practice. *Sarah I. Rees* (Asst. Sec. Reynolds), 7 P. D., 368.

Where, in a claim for increase to \$50 per month on account of the necessity for periodical aid and attendance, there is nothing to show final official action, except medical slips and a brief indorsement on the case jacket, appeal will be dismissed, in order that action on the merits of the claim may be taken by the Bureau on a properly prepared face brief, showing definitely legal and medical conclusions as to all disabilities and claims. *Alfred Barlow* (Asst. Sec. Reynolds), 8 P. D., 282.

FATHERS.

See BOUNTY LAND; DEPENDENT RELATIVES; LIMITATION; REMARRIAGE.

FEE.

1. Generally.
2. Determined by the record.
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4. Forfeiture of fee.
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21. Navy claims, fee in.
22. Reverting claims, fee in.
23. Restoration, fees in claims for.
24. Special act, fees in claims under.
25. Special examinations, fee in.
26. Suspended attorney, fee to.

1. Generally.

Attorneys have no lien on the pension certificate or any claim on the fund. *Eusebius P. Hull* (Sec. Cox), 6 L. B. P., 547.

A fee of \$10 only is due where the completing evidence was filed prior to July 8, 1870, although fee agreements for a greater sum have been filed. *John H. Hanson* (Sec. Delano), 7 L. B. P., 273.

No fee is payable prior to the first payment of pension, notwithstanding nearly ten months may elapse since the pension certificate, with the proper vouchers, was forwarded to the pensioner, during which time no application had been made for payment. *Mynard W. Rynus* (Actg. Sec. Cowen), 1 P. D. (o. s.), 37.

A fee paid to an attorney by the claimant for commutation in lieu of an artificial limb should not be deducted from the fee due such attorney in said claimant's claim for pension, as the matter in which the former fee was paid is without the jurisdiction of this Department. *James McQuirk* (Actg. Sec. Cowen), 2 P. D. (o. s.), 119.

The amount of fee to be paid in a claim is discretionary with the Commissioner of Pensions, notwithstanding the fee agreements. Citing and adhering to ruling of Sec. Cox, August 19, 1870, it being stated that the laws since then have not invalidated the position then taken. *Theodore F. Field et al.* (Actg. Sec. Gorham), 3 P. D. (o. s.), 498.

Payment of fee to an attorney in case where certificate was issued after death of applicant having no child under 16 years of age must be determined by section 4718, which contemplates that the fee should be paid only when the pension is paid. *Sarah King* (Sec. Schurz), 6 P. D. (o. s.), 99.

Attorneys will not be allowed to receive for their services in prosecuting a claim any other sum than that specified in the law, although an additional sum may be voluntarily tendered them by the claimant. *Ross Wilkinson* (Sec. Kirkwood), 8 P. D. (o. s.), 190.

Under the act of June 20, 1878, the Commissioner of Pensions has no discretion as to allowance of fee in cases pending at passage of said act in which fee contracts were filed, but must approve the amount of fee therein fixed. *Emeratta Goit* (Sec. Kirkwood), 8 P. D. (o. s.), 310.

The act of July 4, 1884, provides that the fee for the prosecution of a pension claim shall be \$10 only, unless a larger fee—not exceeding \$25—is agreed upon under a special written contract. The fee will be paid to the attorney or other person entitled thereto by the pension agent out of the pension allowed. *George Hindson* (Asst. Sec. Bussey), 3 P. D., 101.

2. Determined by the record.

Questions of fee are to be determined from the record as it was at the time of adjudication, and that record may not be changed or amended by the addition thereto of ex parte statements or affidavits filed subsequent to the date on which action was taken by the Bureau. *John S. Miller* (Asst. Sec. Reynolds), 7 P. D., 347.

Questions of fee are to be determined from the record as it was at the time of adjudication. That record may not be changed or amended by the addition thereto of statements of attorneys made in briefs submitted by them in support of appeals filed in the Department. *Sidney M. Brownell* (Asst. Sec. Reynolds), 7 P. D., 373.

3. Division of fee.

Two attorneys being recognized and performing material service, the fee should be divided between them. *Rachel Marshall* (Asst. Sec. Bussey), 4 P. D., 413.

In claims already adjudicated, in claims complete though still pending, in claims in the hands of a special examiner, no further service being required, and in claims not yet complete, but in which attorneys, acting in good faith and conforming to the approved practice, have furnished material evidence and performed their duty under their contracts, the fee will be apportioned equitably among such as are entitled to recognition under the rule laid down in the Jewell Case. *Alonso Skull* (Asst. Sec. Reynolds), 7 P. D., 183.

To divide the fee between two attorneys is to reduce it, and to reduce it is to vary the terms of the contract filed by each attorney. This the Commissioner has no authority to do. So much of the decision in the Jewell Case as authorizes the division and apportionment of fees is therefore overruled. *Ibid.*

4. Forfeiture of fee.

Where fee of \$25 was paid to an attorney through oversight, said attorney having neglected the case for more than two years, the second attorney having completed the claim, the office should request the return of \$10, the same to be paid to the second attorney, this being the amount to which he would be entitled under the law. *George A. Barrett* (Sec. Schurz), 6 P. D. (o. s.), 431.

Where attorney for more than a year neglected and paid no attention to claim, a second attorney intervened, upon whose efforts favorable action was taken by the office: *Held*, That the payment of fee to the second attorney was proper. *William T. Newbit* (Sec. Schurz), 7 P. D. (o. s.), 53.

4. Forfeiture of fee—Continued.

The claim for increase in which the appellant was attorney having been abandoned by the applicant, who thereafter filed a claim in his own behalf, which was allowed, the appellant was not entitled to a fee. *Robins E. Babcock* (Asst. Sec. Reynolds), 7 P. D., 285.

The appellant having performed material service, and the claim having been completed within the year to which he was entitled under rule 16 (now 12), should have been paid the fee. *Brewster Case* (In re P. J. Lockwood, March 22, 1894) cited and followed. Where an attorneyship has been forfeited under rule 12, and such forfeiture has been followed by the appointment and recognition of another attorney, the forfeited attorneyship can not be revived. (See ATTORNEYS, 43.) *Patrick Coffee* (Asst. Sec. Reynolds), 7 P. D., 338.

Notice to an appellant for pension or bounty land, whether in a pending or rejected claim, is not notice to the attorney, the latter having rights as to fee which, to a certain extent, are adverse to those of the former. For the protection of these rights notice to the attorney is necessary, and he can not be lawfully deprived of them without it. This decision shall not be retroactive in effect. The decision in the case of *Busher* of October 6, 1891, is reversed, and that in the *Larned* case (7 P. D., 162) reaffirmed. *Calista M. Hardy* (Asst. Sec. Reynolds), 7 P. D., 391.

Where an application under act of June 27, 1890, filed July 19, 1890, was rejected on March 17, 1891, the attorney filing and prosecuting the same having failed to take any action therein since said rejection, is not entitled to a fee upon an allowance of a claim subsequently filed under the same act by the claimant in his own proper person in which said attorney rendered no service. *George Smith* (Asst. Sec. Reynolds), 7 P. D., 424.

5. Fee not dependent on amount of pension granted.

Attorney's fees in pension claims are not regulated by the amount of money received by claimants in pursuance of certificates of pension, the fee in cases of contract being a matter of agreement for service only. *George Hindson* (Asst. Sec. Bussey), 3 P. D., 101.

There is no authority of law for reducing a contract fee because of the small amount of labor performed by the attorney. *Henry L. R. Woods* (Asst. Sec. Bussey), 3 P. D., 239.

An attorney is entitled to his fee without regard to the small amount of labor performed by him or the smallness of the pension allowed. *Hosmer Chase* (Asst. Sec. Bussey), 4 P. D., 89.

5. Fee not dependent on amount of pension granted—Continued.

The Commissioner of Pensions has no authority to reduce the attorney's fee on account of the small amount of pension allowed, or to refuse to issue a certificate because the fee would absorb the whole pension. *John Schoepf* (Asst. Sec. Reynolds), 7 P. D., 19.

Fee should not be denied for the reason that the allowance of the claim in which the fee was earned does not result in pecuniary benefit to the claimant. *Thomas S. Bradford* (Asst. Sec. Reynolds), 8 P. D., 139.

6. Fee dependent on service rendered.

If an attorney positively declines to further prosecute a claim, and during three years thereafter filed no more evidence therein, claimant has a right to appoint another attorney, to whom the fee should be paid for the successful prosecution of such claim, and not to the first attorney. *Mrs. E. A. Batchelder* (Sec. Delano), 2 P. D. (o. s.), 472.

An attorney is not entitled to recognition in a case which was completed when he came into it, and no fee may be allowed such attorney, he having rendered no service in that claim. *Sarah Robertson* (Asst. Sec. Hawkins), 2 P. D., 398.

The fee in a claim for pension is to be allowed only in case some necessary service is rendered by an attorney. The law governing articles of agreement sets forth that the fee agreed upon is "for and in consideration of services done and to be done." The rule is, no service no fee. *Orpheus H. Budlong, attorney* (Asst. Sec. Bussey), 3 P. D., 296.

Where the only ground of rejection of a claim was that the claimant was dishonorably discharged, which ground was subsequently declared by Departmental decision in another case to be erroneous and the claim was accordingly allowed, the attorney of record at the time of original rejection is entitled to the fee, and can not be superseded by another attorney who rendered no service. *Valentine Hitchcock* (Asst. Sec. Bussey), 4 P. D., 19.

To entitle to fee, service must have been rendered. *Mary Franklin* (Asst. Sec. Bussey), 4 P. D., 356.

As appellants had no valid power of attorney in the case and rendered no material service, they have no title to fee. *John H. Schoonover* (Asst. Sec. Reynolds), 8 P. D., 10.

7. Reduction of fee agreed upon.

It is within the power of the Commissioner of Pensions, even when a fee agreement is recognized, to declare that in no case

7. Reduction of fee agreed upon—Continued.

of the nature described will a fee greater than \$10.50 be allowed, to include and cover all services and expenses. *George D. Hilton* (Asst. Sec. Reynolds), 8 P. D., 182.

8. Refundment of fee.

A claim for increase of pension on account of a new disability was filed in this office subsequent to the passage of the act of June 20, 1878, and the attorneys were paid \$5 in advance. On allowance the pension agent was erroneously directed to pay them a fee of \$10; but on the facts becoming known, the attorneys were called upon to refund to the claimant \$5, the amount paid them in excess of the lawful fee: *Held*, Action was proper. *J. Seely Spaulding* (Sec. Teller), 10 P. D. (o. s.), 90.

The appellants having neglected the claim for nearly two years and rendered no service whatever therein, they are not entitled to any fee, and should refund any money advanced to them by the claimant on account of fee. *William J. Stephens* (Actg. Sec. Joslyn), 14 P. D. (o. s.), 535.

Where a fee has been certified and paid to one who was not the attorney entitled thereto, refundment should be made. *James Paxton* (Asst. Sec. Hawkins), 2 P. D., 208.

Where under a former administration, owing to error of law or mistake of fact, or both, a fee has been improperly paid, it is the duty of the Commissioner to require refundment. *John H. Schoonover* (Asst. Sec. Reynolds), 8 P. D., 10.

An attorney's title to a fee is dependent on his client's title to a pension, and where the pension was fraudulently obtained the Commissioner of Pensions may require the refundment of the fee paid the attorney who prosecuted the claim, as well as the pension so paid the claimant. *Elizabeth Striggon* (Asst. Sec. Reynolds), 8 P. D., 12.

The Bureau of Pensions has no authority to demand the refundment of a fee except where the record shows one has been allowed, and paid through error, fraud, or mistake, or where one has been legally allowed, but paid to an attorney not entitled thereto. *Mylon Angel* (Asst. Sec. Reynolds), 8 P. D., 35.

9. No fund, no fee.

The law provides that the fee of an attorney for his services in the prosecution of a claim for pension shall be deducted from the pension allowed under the claim so prosecuted; and if there be no accrued pension under a certificate there is no fund from which the fee can be paid. *George A. Caswell* (Asst. Sec. Bussey), 3 P. D., 40.

9. No fund, no fee—Continued.

When a pension under the act of June 27, 1890, is withheld for the purpose of reimbursing the United States for money advanced claimant under an allowance of pension unwarranted under the general law, the attorney in the new law claim is entitled to a fee, but the same may not be paid until the United States has been reimbursed in full. Departmental decision of January 17, 1893, in re W. W. Dudley, reaffirmed. *Samuel W. Keys* (Asst. Sec. Reynolds), 7 P. D., 78.

Generally a fee should be allowed if a fund has accrued, or may accrue, in the claim in which the fee was earned. *Thomas S. Bradford* (Asst. Sec. Reynolds), 8 P. D., 139.

As the only fee provided by law is to be deducted from the pension, it follows that when payment of accrued pension is expressly limited to the defrayal of the expenses of pensioner's last illness and burial, there is no fund from which the payment of a fee can be made. *Lawrence H. Davis* (Asst. Sec. Reynolds), 8 P. D., —.

10. Fee when two attorneys.

When an attorney files completing evidence within the year allowed a former attorney under Rule 12, and the claim is adjudicated within that year, the evidence thus filed inures to the benefit of the former attorney, it being presumed that he would have completed the claim within the allotted time, and the attorney filing such completing evidence has no title to fee. *Catherine S. Leighton* (Asst. Sec. Reynolds), 7 P. D., 88.

11. Accrued pension, fee in cases of.

Fees can not be paid out of accrued pension money after the death of the pensioner, who had been receiving pension prior to death. *Catharine Shanger* (Actg. Sec. Bell), 7 P. D. (o. s.), 255.

Where accrued pension was paid to widow without deducting the full amount of the fee legally due the attorney, the amount of such overpayment made to widow should be deducted from her current pension and paid to the attorney entitled thereto. *John Zimmer* (Asst. Sec. Hawkins), 2 P. D., 341.

Payment of accrued pension without deducting the proper fee is an overpayment as to such fee, and what is due on fee account should be deducted from current pension. *Hosmer Chase* (Asst. Sec. Bussey), 4 P. D., 89.

The act of March 1, 1889, does not apply to cases where a certificate is issued subsequent to the death of the pensioner named therein, but such case is governed by section 4718,

11. Accrued pension, fee in cases of—Continued.

Revised Statutes, and no fee may be paid if there be no widow or minor child. *Stephen Cronkhite* (Asst. Sec. Bussey), 6 P. D., 61.

12. Advance payment of fee.

A fee can not be demanded or received by an attorney from a claimant on a claim which proved to be a duplicate of one filed prior to June 20, 1878. See sections 4768, 4769, and 4786, Revised Statutes. The provisions of law in these sections are rendered inoperative only in claims filed after June 20, 1878, and in pending claims in which claimant had not been represented by an attorney prior to that date. The fee taken in advance is illegal and should be returned to the claimant. *Malachi Garrison* (Sec. Schurz), 7 P. D. (o. s.), 59.

Where an attorney has received in advance a part of his legal fee, the Commissioner of Pensions will withhold the usual direction to the pension agent to pay the fee, until the attorney refunds the amount received in advance. *John N. Pratt* (Sec. Schurz), 8 P. D. (o. s.), 58.

The claimant himself having already paid his attorney in this claim (who was employed prior to June 20, 1878) before the receipt by the pension agent of the Commissioner's order to pay the fee allowed in said claim, such order should be canceled; and the attorney's fee in the increase claim filed in 1882, since said order was issued, is governed by the act of June 20, 1878, and should be settled between the attorney and the claimant. *H. H. Rittenhouse* (Sec. Teller), 10 P. D. (o. s.), 367.

13. Arrears of pension, fee in cases of.

In a claim for arrears of pension or increase of arrears of pension allowed under an act of Congress passed subsequent to the date of the allowance of the original claim in which said arrears of pension or of increase of pension was allowed, the attorney is not entitled to a fee. (Last proviso of section 3, act of July 4, 1884.) *Rachel Stephenson* (Asst. Sec. Reynolds), 7 P. D., 94.

So far as claims for arrears of pension or arrears of increase of pension, other than those prosecuted under an act of Congress passed subsequent to the allowance of the original claim in which such arrears may be allowed, are concerned, the provision of law contained in section 4711, Revised Statutes, and repeated in section 4 of the act of January 25, 1879, prohibiting the payment of fees in claims for arrears, has been in effect repealed by the second proviso of section 4786, Revised Statutes, as amended by the act of July 4, 1884. *Oliver P. Pierce* (Asst. Sec. Reynolds), 7 P. D., 425.

14. Assignment of fee or attorneyship.

An agreement of the claimant to pay the original attorney or his assigns a fee of \$20 for the successful prosecution of the claim is sufficient warrant for the recognition of appellants as assignees of said attorney, and they are entitled to said fee. *James Parker* (Sec. Teller), 11 P. D. (o. s.), 195.

Where an attorney appears as assignee of the prior attorney he succeeds to the status of such prior attorney, and a payment made to the latter before the assignment under his contract for fee under the fee law of June 20, 1878, should be deducted, and only the balance of the fee allowed under such contract paid. *William Dundas* (Asst. Sec. Bussey), 4 P. D., 21.

When an attorney completes the evidence to establish a claimant's right to pension his fee is earned, and if such attorney dies before the allowance of the claim or issue of certificate the fee vests in his personal representative. *William Goodson* (Asst. Sec. Reynolds), 7 P. D., 294.

15. Difficulty and trouble, fee in cases of.

Service rendered by an attorney in securing the removal of suspension of payment in a pension case comes within the provision of section 4 of the act of July 4, 1884 (amended section 4786, Revised Statutes), authorizing the Commissioner of Pensions to recognize fee agreements in certain classes of claims, "and in such other cases of difficulty and trouble as the Commissioner may see fit to recognize." *George D. Hilton* (Asst. Sec. Reynolds), 8 P. D., 182.

Where application for additional pension is made after issue to allow pension in a widow's original claim, no fee can be allowed unless, in the opinion of the Commissioner of Pensions, claim is one of "difficulty and trouble," in which a fee may be allowed. *Minors of Louis Ollendorf* (Asst. Sec. Reynolds), 8 P. D., 272.

16. Duplicate or reissue of certificate, fee in.

An attorney is not entitled to a fee for obtaining a new certificate changing the name of the pensioner. *Jacob Rathbon, or Rathgeber* (Actg. Sec. Otto), 7 L. B. P., 317.

No fee is due attorneys for obtaining a duplicate pension certificate. *John Hynes* (Actg. Sec. Cowen), 8 L. B. P., 280.

A fee will not be allowed for securing a new or a duplicate pension certificate. *Marvin H. Sackett* (Asst. Sec. Reynolds), 8 P. D., 261.

Where an attorney is obligated to secure the allowance of pension from the earliest date from which pension can be allowed, he is not entitled to an additional fee upon reissue to

16. Duplicate or reissue of certificate, fee in—Continued.

correct the date of the commencement of pension. (See cases of Samuel Werner, Certificate No. 18503, and Andrew G. Van Wie, Certificate No. 137875, cited in Anderson's Digest, section 94.) *Flying* (an Indian) (Asst. Sec. Reynolds), 8 P. D., —.

17. Duplicate or more claims, fee in.

Where a certificate issues allowing pension, the legal fee should be paid under section 4768, Revised Statutes, notwithstanding pension is allowed for a part only of the disabilities alleged. *Daniel L. Barker* (Sec. Teller), 21 Record of Letters Sent (Misc.), 169.

The soldier having filed a claim for pension, with articles of agreement for a fee of \$25, died in 1882, pending the adjudication of the claim, and his widow continued its prosecution, authorizing the same attorney to represent her. The Secretary found, as a matter of fact, that the appellant attorney continued to act under his original power of attorney given by the soldier until the final adjudication of the claim, and concluded, as "a matter of law," that said attorney had ample authority for so acting, and the contract fee should be paid, notwithstanding said attorney may be entitled also to a fee in the widow's original claim, as the pending invalid claim and said widow's original claim were separate and distinct claims, and fee is allowable in both. *Stephen J. Kester* (Sec. Teller), 21 Record of Letters Sent (Misc.), 250.

The act of June 20, 1878, should be regarded as referring to the claim on file at the date of its passage, and the agreement for fee therein should be treated as a contract for the prosecution of that claim only and not for the prosecution also of a claim filed subsequent to that date on account of another alleged cause of disability, the latter being a separate and distinct claim so far as fee is concerned under said act. *Riley Osborn* (Sec. Teller), 12 P. D. (o. s.), 410.

It is the uniform practice of the Pension Office, and approved by this Department, and is hereby again approved, that where several disabilities are alleged in a claim and a fee agreement for \$25 for the prosecution of such claim is filed, \$10 only of the fee will be paid on the issue of the first certificate allowing pension on account of part only of such disabilities, and the rest of the fee will be withheld until the settlement of the claim. *Joseph H. Estes* (Sec. Teller), 13 P. D. (o. s.), 16.

Where a claim for increase stood rejected, and no effort was made to have it reconsidered, but instead a new claim was filed, which was allowed: *Held*, Money paid by the claimant

17. Duplicate or more claims, fee in—Continued.

to the attorneys (who had filed both claims) as part of their fee in the first claim could not be deducted from the total fee of \$10 due them in the second claim, under the law then in force. *Adam Caughman* (Asst. Sec. Hawkins), 2 P. D., 130.

Where a subsequent claim is filed on account of a disability already alleged in the original declaration, in which a fee of \$25 was contracted for and paid, no fee may be allowed on reissue to allow pension for such disability. Reconsidering decision of August 14, 1888, and decision adhered to. *David S. Snow* (Asst. Sec. Hawkins), 2 P. D., 190.

On motion for reconsideration it was held that, where fee agreements for \$25 were filed in a claim alleging two disabilities, but one of which is primarily admitted and the fee of \$25 paid, no additional fee may be paid on the subsequent admission of the other alleged disability. Citing *Daniel L. Barker*, November 15, 1886. *Philip Steinhizer* (Asst. Sec. Hawkins), 2 P. D., 195.

Where a declaration alleges several disabilities, but one of which is primarily allowed, and the contract fee of \$25 is paid, no further fee may be allowed on a subsequent issue allowing pension on account of the other alleged disabilities. *Oliver Graffan* (Asst. Sec. Hawkins), 2 P. D., 211.

Where a declaration alleges several disabilities, but one of which is primarily admitted and the contract fee of \$25 paid, no further fee is allowable on a subsequent issue admitting to pension the other alleged disabilities. *Simmons Kelly* (Asst. Sec. Hawkins), 2 P. D., 235.

Where several causes of disability have been alleged in declarations which are pending at the same time, they shall constitute but one claim, for the prosecution of which but one fee may be allowed. *James H. Aldrich* (Asst. Sec. Hawkins), 2 P. D., 339.

All the causes of disability, alleged by the applicant for pension, which are pending at the same time and in which the applicant is represented by one attorney or firm, constitute but one claim, in which but one fee can be allowed. *Zadoc Day* (Asst. Sec. Bussey), 3 P. D., 76.

All the causes of disability alleged by an applicant constitute but one claim, for the prosecution of which but one fee can be allowed. *Jesse C. Griffiths* (Asst. Sec. Bussey), 3 P. D., 114.

All the causes of disability alleged in the application pending before the issue of the original certificate constitute but one claim, for the prosecution of which but one fee can be

17. Duplicate or more claims, fee in—Continued.

allowed. The sum of \$25 is the limit of the fee allowable for the prosecution of a claim for pension. *Leonard K. Kelly* (Asst. Sec. Bussey), 3 P. D., 218.

Where two separate causes of disability are alleged, and the attorney originally appointed abandons the case after the issue of a certificate for pension for one of the causes and payment of the fee, there is an unavoidable necessity for the payment of a second fee to an attorney who may prosecute to a successful issue the remaining portion of the claim. *Robert Irons* (Asst. Sec. Bussey), 3 P. D., 228.

The phrase "a new disability," occurring in section 4, act of July 4, 1884, refers to a disability alleged for the first time after the issue of a pension certificate. Where two or more causes of disability for which pension is granted were alleged in the original declaration, they will be regarded as constituting one claim, for which but one fee can be allowed. *William H. Dietz* (Asst. Sec. Bussey), 3 P. D., 302.

Where a declaration alleges several disabilities, but one of which is primarily admitted as pensionable, and the contract fee of \$25 paid, no additional fee may be paid on the subsequent allowance of the other alleged disabilities, although a subsequent agreement was filed by the same attorneys for additional fee. *Ichabod H. Albee* (Asst. Sec. Bussey), 4 P. D., 38.

Where a claimant filed one declaration, alleging injury to left side by falling from his horse, and subsequently, while the first declaration was pending, another, alleging different results of such fall, the same attorneys appearing in both claims, and the contract fee of \$25 was paid on allowance of injury to left side only, no additional fee may be paid on a subsequent allowance of the other alleged disabilities, although an agreement for additional fee had been filed; as the two declarations constitute but one claim, for the prosecution of which but one fee can be allowed. *Joseph Davison* (Asst. Sec. Bussey), 4 P. D., 125.

Where a declaration alleges several disabilities, a part only of which are primarily pensioned, and the contract fee of \$25 paid, no additional fee is allowable to the same attorneys on a subsequent allowance of pension on account of the other alleged disabilities, although a new fee agreement for an additional fee may have been filed; but an additional fee (of \$10) may be allowed in a claim for increase on account of the first pensioned disability, or a contract fee of \$25 in an increase claim on account of a "new disability." Citing *James H. Aldrich*, 2 P. D., 239; 3 P. D., 3; *Jesse C. Griffiths*, 3 P. D., 114. *Josiah M. Marlow* (Asst. Sec. Bussey), 4 P. D., 191.

17. Duplicate or more claims, fee in—Continued.

Where declaration alleged several causes of disability, one of which was admitted, and the contract fee paid to the attorney, no additional fee is allowable, on the subsequent admission of the other alleged causes, to such attorney's wife, to whom a subsequent fee agreement had been given. *William H. Crisp, alias Joseph Kennedy* (Asst. Sec. Bussey), 6 P. D., 196.

A soldier was pensioned by special act pending adjudication of his claim under the general law, which was subsequently allowed at the same rate as his current pension, and certificate issued, the claimant electing to surrender his pension under said act: *Held*, That the attorneys who prosecuted said claim are entitled to their contract fee of \$25. *Asa Dye* (Asst. Sec. Bussey), 6 P. D., 279.

Where a widow claims pension for herself and her own children, and also declares for a child of soldier by a former wife, the claim is an entirety and the rights of all the parties are subject to a single adjudication. In such a case the attorney is entitled to but one fee. *Sarah Clark* (Asst. Sec. Reynolds), 7 P. D., 47.

When a widow claims pension under act of June 27, 1890, for herself and her minor child, and afterwards files an affidavit declaring for children of the soldier by a former marriage, and the guardian of such children files another declaration, claiming on their account: *Held*, That the two declarations constitute but one claim, for which but one fee can be paid. Reaffirming case of *Sarah Clark*, 7 P. D., 47. *Hattie G. Dyer* (Asst. Sec. Reynolds), 7 P. D., 160.

Where two or more applications for pension or additional pension on account of new disability are simultaneously pending, whether the declarations allege the same or different disabilities, and these declarations were filed by the same or different attorneys at the same or different times, they constitute but one claim, for which but one fee may be paid.

In claims now pending in which no material service has been performed, and in claims hereafter filed, the fee will be considered as an entirety, and, upon an allowance, be certified to the attorney entitled to compensation under the law and the rules. *Alonzo Shull* (Asst. Sec. Reynolds), 7 P. D., 183.

Where pension has been granted to several minor children, the pension of each is chargeable with his or her proportionate part of the fee due the attorney by whom the claim was prosecuted. Where payment to one of said minors is withheld, there is no fund available for the payment of his or her part of said fee. *Paul N. Kelsey et al.* (Asst. Sec. Reynolds), 7 P. D., 451.

17. Duplicate or more claims, fee in—Continued.

An attorney who is a member of a firm which received the full contract fee in the original claim is not entitled to an additional fee in a claim for rerating or reissue to correct the date of the commencement of pension allowed in the original claim. *Patrick McEneany* (Asst. Sec. Reynolds), 8 P. D., 206.

Claims for additional pension to widows, under section 4703, Revised Statutes, whether commenced by the widow or by the guardian in behalf of the minor children of a soldier by a former wife, are not original claims for pension within the meaning of the act of July 4, 1884, in relation to fees. *Minors of Louis Ollendorf* (Asst. Sec. Reynolds), 8 P. D., 272.

Where application for such additional pension and for the widow's additional pension are pending separately and simultaneously they constitute but one claim, for the prosecution of which only one fee can be paid. *Ibid.*

As the appellant has received the stipulated fee, he is not entitled to an additional one. Cases of *Sarah Clark*, 7 P. D., 47, and *Hattie G. Dyer*, 7 P. D., 160, affirmed. *Minors of Robert C. Banker* (Asst. Sec. Reynolds), 8 P. D., 303.

Where an attorney, who has been paid \$25, enters into a partnership, and the firm files new articles of agreement, no fee can be paid to the firm for completing the claim for disabilities pending when the certificate issued on which the attorney received the \$25 but not included in such certificate. (Anderson's Digest, sec. 54, citing case of *Christian Whisler, Travis & Brown, appellants.*) *August Koch* (Asst. Sec. Reynolds), 8 P. D., —.

18. Duplicate declarations, fee in.

Where two applications identical in substance and purpose are filed in a pension claim, each by a different attorney, and by mistake are jacketed separately and given different numbers, and both attorneys render service, the attorney filing the first application is entitled to recognition and the fee. *Caroline Hoffman* (Asst. Sec. Reynolds), 8 P. D., 66.

19. Increase claims, fee in.

No fee is allowable in increase applications under the act of June 8, 1872. *Jacob Shuback* (Sec. Delano), 1 P. D. (o. s.), 6.

No fee is allowable in a claim which is adjudicated merely upon the presentation of a pension certificate in a prior claim, as in a minor's claim for increase. *W. D. Whitely* (Actg. Sec. Cowen), 3 P. D. (o. s.), 15.

19. Increase claims, fee in—Continued.

No fee is allowable in claims where rates for specific disabilities are increased by law. *John W. Hall* (Sec. Chandler), 3 P. D. (o. s.), 84.

Attorneys have the right to receive a fee not exceeding \$10 in claims for increase under the act of June 17, 1878. *James Nolan* (Sec. Schurz), 6 P. D. (o. s.), 32.

A claim for increase having been filed prior to June 20, 1878, and allowed subsequent thereto, it is held, under decision in *William Lencroix*, that said claim was a pending claim for increase within the meaning of the act of that date, and payment of the fee contracted for in the agreement filed in said claim is mandatory on the Commissioner, under the provisions of said act and section 4786, Revised Statutes. *John A. Walker* (Sec. Kirkwood), 9 P. D. (o. s.), 45.

No greater fee than \$10 can, under the law, be allowed in increase claims on account of the pensioned cause alone, although fee agreements for a greater fee be filed. *Absalom F. Kagley* (Asst. Sec. Hawkins), 2 P. D., 132; *Theophilus Sweet* (Asst. Sec. Hawkins), 2 P. D., 162.

An attorney in an increase claim is not entitled to any fee if increase is secured merely by operation of law. Citing as similar, and following decision of June 28, 1888, in appeal of same attorneys in claim of *Franklin S. Monerief*, certificate No. 28732 (unpublished). *Rhodes J. Colvin* (Asst. Sec. Hawkins), 2 P. D., 164.

Fee agreements may be recognized in an increase claim on account of a new disability, but no fee greater than \$10 may be allowed in increase claims on account of pensioned cause alone, although fee agreements for a greater sum may have been filed. *David S. Snow* (Asst. Sec. Hawkins), 2 P. D., 190.

Where increase is by operation of law no fee is allowable. Citing decisions of July 13, 1872, and November 20, 1875; no claims specified. *John Way* (Asst. Sec. Hawkins), 2 P. D., 226.

A greater fee than \$10 is not allowable in an increase claim on account of pensioned cause alone, although fee agreements for a greater sum may have been filed. Reconsidering and adhering to decision of August 3, 1888. *Theophilus Sweet* (Asst. Sec. Hawkins), 2 P. D., 236.

The law does not permit the allowance of a second fee in a claim for original invalid pension, except in case of an application for increase on account of a new disability, or of a disability alleged for the first time in a declaration filed after the claim as originally presented has been adjudicated. *Jesse C. Griffitts* (Asst. Sec. Bussey), 3 P. D., 114.

19. Increase claims, fee in—Continued.

No fee in excess of \$10 may be allowed in a claim for increase on account of results of the pensioned disability only, although fee agreements for a greater sum may be filed. *Oliver W. Burnham* (Asst. Sec. Bussey), 4 P. D., 407.

No fee may be allowed in an increase claim where increase is by operation of law. *John B. Howes* (Asst. Sec. Bussey), 6 P. D., 50.

The fee in a claim for increase of pension under the act of June 27, 1890, regardless of the cause upon which the said claim is based, is governed by the fourth proviso to the pension appropriation act of March 3, 1891, and can not exceed \$2. *Joseph P. Smith* (Asst. Sec. Reynolds), 7 P. D., 11.

Under the act of June 27, 1890, a condition of inability to earn a support by manual labor is the test of the soldier's title to pension, and provided, always, that such condition is not the result of his own vicious habits, the manner in which it is brought about is not material. The pension once granted because the soldier was in part unable to earn a support by manual labor, further inability, whether it be due to a disability already recognized or to one newly alleged, is but an increase of pensioned cause. *George Jacob* (Asst. Sec. Reynolds), 7 P. D., 39.

The provisions of the act of Congress approved March 3, 1891, limiting to \$2 attorneys' fees in cases where claims are allowed for increase of pension on account of increase of the disability for which the pension was granted, is applicable to all claims for increase under the act of June 27, 1890. *Ibid.*

Where in the same declaration claimant asks for increase, and alleges a new disability, and an attorney prosecutes the claim under articles of agreement, the contract applies to the whole matter pending, and the attorney is entitled to but one fee. Departmental decision of November 3, 1890, in re *Milo B. Stevens & Co.*, attorneys (4 P. D., 191), reaffirmed. *Jacob S. Jones* (Asst. Sec. Reynolds), 7 P. D., 73.

When an attorney files an application for straight increase and also for additional pension for new disability, and prosecutes the claim under articles of agreement subsequently filed, though the additional pension for the new disability and the increase for pensioned cause be allowed at different times, said articles of agreement apply to all the disabilities and but one fee will be paid. *Isaac Johnson* (Asst. Sec. Reynolds), 7 P. D., 105.

Appellant came into the claim for straight increase subsequent to the passage of the act of Congress reducing fees in

19. Increase claims, fee in—Continued.

such cases to §2. *Held*, That his rights as to fee are derived from the law in force at the time the contract between him and the claimant was entered into, and not from the law as it was when the declaration was filed. It follows, therefore, that but \$2 could have been allowed. *Daniel Covey* (Asst. Sec. Reynolds), 7 P. D., 453.

Claims for additional pension to widows under section 4703, Revised Statutes, whether commenced by the widow or by the guardian on behalf of the minor children of a soldier by a former wife, are not original claims for pension within the meaning of the act of July 4, 1884, in relation to fees. *Minors of Louis Ollendorf* (Asst. Sec. Reynolds), 8 P. D., 272.

20. Minors' claims, fee in.

Where an attorney has fee agreements for \$25 for prosecuting a claim by several minors, he is entitled to the full contract fee, notwithstanding one of such claimants may have died while the claim was pending. *Minors of John S. Shults* (Asst. Sec. Hawkins), 2 P. D., 298.

Where there are two or more minors entitled to pension, and one of them dies while the claim is pending, there should be no deduction from the amount of pension to be paid up to its death, but the surviving minors are entitled to the full amount of pension, and the attorney prosecuting the claim under a fee agreement signed by all the claimants is entitled to the full amount of the contract fee. *Ibid.*

The law does not authorize the practice of assessing, pro rata, the minors in a pension claim for the payment of attorney's fee upon any other basis than that of equal liability for the same. *Minors of Granville Todd* (Asst. Sec. Bussey), 3 P. D., 383.

21. Navy claims, fee in.

The pension or allowance granted old and disabled seamen by section 4756, Revised Statutes, though a pension in the general and legal significance of the term, is not such a pension as is contemplated by the act of July 4, 1884, providing for the allowance and payment of attorneys' fees. Claims under said section are adjudicated by the Secretary of the Navy, whose certificate of allowance is authority for the payment of the pension by the Commissioner of Pensions. The latter's duty is therefore purely ministerial, and he has no jurisdiction in the matter of fees. *John Williams* (Asst. Sec. Reynolds), 7 P. D., 138.

22. Rerating claims, fee in.

On the reopening of a widow's claim for consideration of the question of her right to a higher rate of pension by reason of her husband having held a higher rank at the time he contracted the fatal disease, the attorney is not entitled to another fee. *Ellen M. Godfrey* (Sec. Kirkwood), 9 P. D. (o. s.), 62.

If the claim for rerating is filed by the attorney in the original claim and is based upon a right existing when his original contract to prosecute the claim was made he is not entitled to another fee, it being his duty under his original contract to perform all the service necessary to obtain the correct rate. *Alfred Halstead* (Asst. Sec. Reynolds), 7 P. D., 359.

23. Restoration, fees in claims for.

On allowance of an application for restoration, pension having been withdrawn on the ground that pensionable disability had ceased, attorneys may be recognized; such application is a "claim" within the meaning of section 5485, Revised Statutes, so as to bring the attorneys therein subject to the penalties prescribed in said section; and where the Pension Office finds it necessary to correspond with said attorneys, who thus contributed at least advice and service in the prosecution of said claim, they are entitled to a fee under sections 4785 and 4786, Revised Statutes. *Hubert J. Wideawake* (Sec. Teller), 10 P. D. (o. s.), 372.

Where a claimant is dropped from the rolls on the ground that his pensioned disability had ceased, a claim for restoration does not come within the terms of section 4786, Revised Statutes, as to fee agreements, and a fee in excess of \$10 may not be allowed in such claim. *Sanford A. Haynes* (Asst. Sec. Bussey), 4 P. D., 405.

24. Special act, fees in claims under.

Where articles of agreement for \$25 were filed in a claim under the provisions of the general pension laws and it was rejected, and afterwards a pension was granted the claimant by a special act, it was held that the attorney was not entitled to the contract fee, for the reason that the claim was not prosecuted to a successful issue before the Pension Office. Payment of a fee of \$10, according to former practice in such cases, is approved. *Edwin Johnson* (Sec. Delano), 2 P. D. (o. s.), 222.

The provision of the act of June 20, 1878, which directs that "in pending cases in which a fee contract has heretofore been filed, if the pension shall be allowed the Commissioner of Pensions shall approve the same as to the amount of the fee to be paid at the amount specified in the contract" refers to

24. Special act, fees in claims under—Continued.

claims prosecuted to a successful issue before the Pension Office, and not to claims allowed by special acts of Congress. *Robert S. Toland* (Sec. Kirkwood), 9 P. D. (o. s.), 51.

25. Special examinations—fee in.

An attorney appearing in a claim under contract with applicant after a prima facie case has been made out and the claim is in the hands of a special examiner, no further services by an attorney being necessary, acquires no right to recognition and he is not entitled to a fee. *Robert McCorkle* (Asst. Sec. Reynolds), 7 P. D., 158.

26. Suspended attorney, fee to.

An attorney can not be paid a fee in a case allowed upon evidence presented during his suspension. *Joseph Armstrong* (Sec. Schurz), 4 P. D. (o. s.), 274.

See also BOUNTY LAND; COMMISSIONER OF PENSIONS; ELECTION; FEE CONTRACT; MINORS; RECORDS; REIMBURSEMENT.

FEE CONTRACTS.

1. Execution of contract.
2. Stipulations in contract.
3. When must be filed.
4. Must be in duplicate.
5. Must specify amount of fee.
6. Must acknowledge amount received.
7. Indorsement on, no part of contract.
8. Fraudulent contract.
9. Void contract.
10. Under Order No. 144.
11. Terms of, may not be varied.
12. When contract can not be impeached.
13. Conditions of, must be executed.
14. In increase claims.
15. In minors' claims.
16. In claims under special act.
17. In cases of difficulty and trouble.
18. Commissioner must approve.

1. Execution of contract.

Agreements as to fees, executed before the attorney of record himself, will not be recognized. *Jacob Menter* (Sec. Delano), 2 P. D. (o. s.), 316.

1. Execution of contract—Continued.

A fee agreement which is unattested and not filed in duplicate may not be recognized, and no fee in excess of \$10 may be paid in such claim. *Marcus L. Penland* (Asst. Sec. Hawkins), 2 P. D., 194.

A fee agreement not executed by the attorney in the presence of and certified by some officer competent to administer oaths is not valid under the statute and can not be enforced, notwithstanding such attorney has prosecuted the claim to a successful issue. *Stewart R. Tansey* (Asst. Sec. Reynolds), 7 P. D., 93.

Notaries public under the laws of Indiana have jurisdiction coextensive with the limits of the State. An instrument in writing, acknowledged before a qualified notary public in Indiana and within his jurisdiction, is not void because the caption of the officer's certificate of acknowledgment names a county other than the county in which the acknowledgment was actually taken. If it contains the name of the State in which the acknowledgment was taken, it is sufficient. A certificate of acknowledgment of a fee agreement under section 4786, Revised Statutes, is not defective because one of the attesting witnesses was the officer who took the acknowledgment to the same. *Nathan N. Stanley* (Asst. Sec. Reynolds), 7 P. D., 243.

Fee agreements in which the signature of the claimant is not attested by two witnesses, in whose presence and hearing the contract was read, are invalid, and the same may not be approved by the Commissioner of Pensions. *William R. Hampton* (Asst. Sec. Reynolds), 7 P. D., 254.

Fee agreements filed since December 13, 1893, not acknowledged before an officer competent to administer oaths, as required by section 4 of the act of July 4, 1884, are invalid and may not be approved. *John S. Miller* (Asst. Sec. Reynolds), 7 P. D., 347.

The fee agreements filed by appellant were defective in this—that in one of said agreements the signature of claimant is not attested by two witnesses, as required by law. Articles of agreement are more than evidence of a contract; they are vouchers as well. The law requires that one copy shall be transmitted to the agent to whom the pension is payable, and is his authority for the payment of the fee; the other must be filed in the Bureau as an essential part of the record in the case. Where one copy is defective, the other may not be approved. *Josias Gunn* (Asst. Sec. Reynolds), 7 P. D., 410.

2. Stipulations in contract.

Fee agreements containing a provision conditioning that the amount of the stipulated fee shall be dependent upon the rate of pension allowed are not in violation of law or public policy, and will, therefore, be recognized. *Thomas Robinson* (Asst. Sec. Reynolds), 8 P. D., 211.

3. When must be filed.

Under the act approved July 4, 1884, relating to fees of attorneys in pension cases, articles of agreement as to fees should not be recognized unless filed before granting the certificate of pension. *Mahana T. Dampier* (Asst. Sec. Bussey), 3 P. D., 217.

All evidence as to the contract in relation to fees between claimants and their agents or attorneys must be filed prior to issue of the certificate of pension in the claim to which it is to be applied. *Elias Shank* (Asst. Sec. Reynolds), 8 P. D., —.

4. Must be filed in duplicate.

Where payment of fee of \$25 was declined upon the ground that contracts were not filed in duplicate, a copy of original is accepted to supply deficiency and payment of fee authorized as though duplicate contracts were originally filed. *Henry Jamieson* (Sec. Schurz), 6 P. D. (o. s.), 361.

5. Must specify amount of fee.

A fee of \$10 is allowable in a case in which the fee agreement fails to specify any certain sum; and an agreement "to allow a fee not to exceed \$25, or such other sum as the Commissioner of Pensions may see fit to allow" is invalid. *Mary H. Reed* (Actg. Sec. Gorham), 3 P. D. (o. s.), 364.

Contracts for fees filed under section 4786, Revised Statutes, where the amount to be paid is not designated therein, are informal, and action of office authorizing the payment of a fee of \$10 was proper. *Charles K. Ware* (Actg. Sec. Bell), 7 P. D. (o. s.), 180.

6. Must acknowledge amount received.

The act of July 4, 1884, provides that if, in the adjudication of any claim for pension in which articles of agreement have been or may hereafter be filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then, any such claim shall be adjudicated in the same manner as though no articles of agreement

6. Must acknowledge amount received—Continued.

had been filed, deducting from the fee of \$10 allowed by law such amount as claimant shall show that he has paid to his attorney. *Zadoc Day* (Asst. Sec. Bussey), 3 P. D., 76.

The failure of fee agreements to acknowledge receipt of a fee payment already made is fatal to the allowance of fee in such agreement. *Louis H. Leland* (Asst. Sec. Bussey), 4 P. D., 383.

7. Indorsement on, no part of contract.

Any writing on the face margin of a fee agreement, not referred to in the body thereof, is no part of such agreement, and will not be considered for the purpose of explaining its contents. *Charles V. Selkirk, alias Selkrig* (Asst. Sec. Reynolds), 7 P. D., 576.

8. Fraudulent contract.

Where the attorney procured his fee agreement by representing that the new pension laws require a new form of fee agreement, and make the fee \$25 instead of \$10: *Held*, That such agreement was obtained by taking undue advantage of the claimant, and is invalid. *Anton Kuhn* (Asst. Sec. Bussey), 6 P. D., 195.

9. Void contract.

Contracts for fees are not valid if made with a minor. *Minors of William Sargent* (Sec. Schurz), 6 P. D. (o. s.), 395.

10. Under Order No. 144.

The issuance of Bureau Order No. 144 of October 25, 1889, requiring attorneys to have printed on the reverse side of fee contracts under which claims are prosecuted by them a copy of the act of July 4, 1884, and a notice to claimants that said contracts are permissible, but not compulsory, was within the executive authority of the Commissioner of Pensions, and said order will not be abrogated. *Ann C. Hill* (Asst. Sec. Reynolds), 7 P. D., 139.

11. Terms of, may not be varied.

The law does not confer upon the Commissioner of Pensions authority to vary the terms of a contract for fees made in accordance with the law. *Thomas A. Harris* (Asst. Sec. Reynolds), 7 P. D., 50.

12. When contract can not be impeached.

The genuineness of fee agreements attested under seal may not be impeached by the uncorroborated testimony of claimant.

12. When contract can not be impeached—Continued.

that he did not sign any paper similar in description to said contracts. *Ned Grease* (Asst. Sec. Reynolds), 7 P. D., 423.

13. Conditions of, must be executed.

The law does not authorize the Commissioner of Pensions to reduce the attorney's fee (as stipulated in an agreement) on account of the small amount of pension allowed. The fee agreement, made and filed in pursuance of the law, must be executed in conformity with its terms. *Leander Phillips* (Asst. Sec. Bussey), 3 P. D., 136.

14. In increase claims.

A pensioner being pensioned for hernia of one side filed, in 1876, a claim on account of hernia of the other side, and a fee contract for a fee of \$25, which claim was pending. June 20, 1878: *Held*, That said claim was a claim for increase, and that as the law (section 4786, Revised Statutes) makes no distinction, as to filing fee contracts, between claims for original and for increase pension, and the filing of such contracts in increase claims is not unauthorized by law or expressly discouraged by the practice of the office, the contract in this case is within the act of June 20, 1878, and the Commissioner must pay the full fee. *John A. Walter* (Sec. Kirkwood), 9 P. D. (o. s.), 45.

A contract for a fee may properly be made in relation to a claim for increase of pension on account of disabilities for which pension has been allowed and also new disabilities. *Peter F. White* (Asst. Sec. Hawkins), 2 P. D., 399.

The law does not authorize articles of agreement in a claim for increase of pension on account of increase of the disability for which pension has been allowed, for the reason that the fee in such cases can not exceed \$10. *Francois Barber* (Asst. Sec. Bussey), 3 P. D., 371.

15. In minors' claims.

One minor, having a joint interest with others, may contract for all in a given pension claim upon which only a single certificate is issued, and the failure of one to sign the contract will not impair the obligation of all the beneficiaries of the claim to pay jointly and equally the contract fee for the prosecution of the claim itself. *Minors of Granville Todd* (Asst. Sec. Bussey), 3 P. D., 383.

Pension claims in behalf of minors, how many soever said minors be, are held in each instance to be a single claim, divisible in distribution but not in allowance, and the Commissioner of Pensions must execute, without discretion on his part, the terms of the contract for the attorney's fee in such claims. *Ibid.*

16. In claims under special act.

A fee of \$10 only is allowable in a claim for pension under a special act although the attorney may have had a fee agreement for a larger sum in a prior claim under the general law, and although he may have rendered valuable service in procuring the passage of the special act. *Edwin Johnson* (Sec. Delano), 2 P. D. (o. s.), 222.

Contracts for fees, filed in claims under general law, do not apply to special-act claims. *Warren F. Wood* (Sec. Schurz), 5 P. D. (o. s.), 403.

17. In cases of difficulty and trouble.

Fee agreements may be recognized in restoration claims involving "difficulty and trouble," although the pensioner's name was not dropped from the rolls upon testimony taken by a special examiner showing that the disability or cause of death on account of which the pension was granted did not originate in line of duty. Decision in case of *Sanford A. Haynes* (4 P. D., 405), overruled. *Albert A. Watson* (Asst. Sec. Reynolds), 7 P. D., 330.

A claim for rerating is one in which articles of agreement may be filed, and in which, if the case be one of "difficulty and trouble," the same may be approved by the Commissioner and the contract fee paid. The question as to whether or not it is such a case is one to be determined by the Commissioner, and if he decides that it is not, but \$10 may be paid. If no contracts have been filed the attorney is entitled to \$10. *Alfred Halstead* (Asst. Sec. Reynolds), 7 P. D., 359.

In a claim for arrears, not of the class of claims contemplated by the second proviso of section 4786, Revised Statutes, articles of agreement may be filed by the attorney, and if the case be one of "difficulty and trouble" the same may be approved by the Commissioner and the contract fee paid. If such agreements have been filed and the case be not one of "difficulty and trouble," or if no agreements are on file, but \$10 may be allowed. *Oliver P. Pierce* (Asst. Sec. Reynolds), 7 P. D., 425.

18. Commissioner must approve.

The Commissioner's approval of an agreement is essential to give effect to it, and allowance of fee is wholly discretionary with the Commissioner (except that it may not exceed \$25) notwithstanding the agreement. *Minors of Jacob Minn* (Sec. Cox), 7 L. B. P., 220.

See ATTORNEYS; FEES.

FIRMS.

See ATTORNEYS.

FORFEITURE.

Forfeiture of pay, by sentence of court-martial, does not involve forfeiture of pension. *George W. Roberts* (Sec. Browning), 6 L. B. P., 399.

See also ADULTEROUS COHABITATION; ATTORNEYSHIP; ABANDONMENT; CITIZENSHIP; DESERTION; EVIDENCE; FEE; MINORS; REMARRIAGE.

FORGERY.

See AFFIDAVIT; EVIDENCE.

FRAUD AND MISTAKE.

1. In procuring pension.
2. In procuring arrears.
3. In assignment of bounty-land warrant.
4. Mistake of fact.
5. Fraud in procuring divorce.
6. Government may reimburse itself in case of.
7. Government may not reimburse itself except in case of.

1. In procuring pension.

The issue of a pension certificate to the wrong party does not justify the Commissioner in afterwards refusing a certificate to the rightful party. *Atty. Gen. Cushing*, 8 Op., 377.

2. In procuring arrears.

As pensioner, in order to obtain his arrears of pension, which covered the period of his second service, was required to and did make oath that he had not been in service since the date of commencement of said pension, such procurement of pension was an actual fraud on his part. *Cyrus Pike* (Asst. Sec. Hawkins), 2 P. D., 65.

3. In assignment of bounty-land warrant.

The Department declines to disturb the action of the Pension Office canceling assignment of warrant, in consequence of its being surrounded with presumption of fraud, there being no proof that injustice is done to any party or parties by said action, or that anyone would have title to said warrant if restored. *Martin Byrne* (Sec. Schurz), 6 P. D. (o. s.), 468.

4. Mistake of fact.

The act of December 21, 1893, making a pension to a certain extent a vested right, has no application to cases in which pension money is paid by mistake of fact, but applies to cases only in which the question is as to error of judgment. *Archibald A. Rudder* (Asst. Sec. Reynolds), 7 P. D., 488.

5. Fraud in procuring divorce.

Where a decree has been obtained by the fraud of either of the parties to the suit, or by the collusion of both, it may be impeached, even in a collateral proceeding, by a stranger to it who would be prejudiced thereby in regard to some preexisting right were the decree given full credit and effect. A stranger to such decree is held to be a person not notified of an action nor a party thereto, and who had no opportunity or right to control the defense, introduce or cross-examine witnesses, prosecute a writ of error, or take an appeal therein. While parties and their privies to a decree rendered by a court within its jurisdiction can not impeach it collaterally, even for fraud or collusion, but must proceed to obtain relief by appeal or some other direct method, in this case, as the Government was neither a party nor privy to said proceedings for a decree of nullity, and is directly interested as a third party in the force and effect to be given said decree as evidence, it may avoid the same on the ground that it was procured through fraud and collusion, as it is a distinct step in the prosecution of appellant's claim for restoration of pension, and said decree will not be received to invalidate the claimant's said marriage for the purpose of restoring her name to the pension rolls as the widow of said soldier. *Frances H. Monholland* (Asst. Sec. Reynolds), 7 P. D., 494.

6. Government may reimburse itself in case of.

While prosecuting his claim for pension under the general law for disease of the left lung, claimant concealed the fact that he has been shot through said lung prior to his enlistment, which wound caused his disease of lungs. It is held that such concealment amounts to actual fraud on his part, warranting the withholding of the pension granted him under the act of June 27, 1890, to reimburse the Government for moneys paid him as pension under the general law on account of such disease of lungs. *James A. Trosper* (Asst. Sec. Reynolds), 8 P. D., 75.

Where the claimant concealed the fact that he had epileptic fits before enlistment and introduced testimony to show that he was in sound bodily health when he entered the Army, and there was nothing in the evidence before the Pension Bureau to suggest the contrary, and pension was allowed for epilepsy, which, it was subsequently ascertained, existed before enlistment, it is held that the pension was procured by fraud, and pension due under the act of June 27, 1890, may be withheld to reimburse the Government for the amount erroneously paid. (Appeal of *James A. Trosper*, 8 P. D., 75.) *William H. Robeson* (Asst. Sec. Reynolds), 8 P. D., —.

5. Government may reimburse itself in case of—Continued.

While prosecuting his claim for pension under the general law for an injury of the left hip, claimant concealed the fact that he had dislocated said hip when a boy before said enlistment, and that he was also afflicted with rheumatism of the hips before he enlisted. Such concealment is held to have amounted to actual fraud on his part in prosecuting his claim, warranting the withholding of the pension granted him under the act of June 27, 1890, to reimburse the Government for moneys paid him under the general law on account of said injury to hip. (*Appeal of James A. Trosper*, 8 P. D., 75.) *Herman G. Pike* (Asst. Sec. Reynolds), 8 P. D., 314.

7. Government may not reimburse itself except in case of.

The Government can not withhold the pension granted under the act of June 27, 1890, to reimburse itself for moneys erroneously paid as pension under the general law when such pension was not procured through fraud or mistake, but was allowed as the result of an erroneous judgment on the evidence. *Christian May* (Asst. Sec. Reynolds), 8 P. D., 71.

Recovery of pension, when paid upon an erroneous judgment and not through fraud or mistake of fact, is without authority of law or the rules of practice, as interpreted by the opinion of the Assistant Attorney General (6 P. D., 297). Pension was allowed in this case under the general law, upon an erroneous judgment as to the sufficiency of evidence of the contributions of soldier, and when additional evidence was filed showing that no contributions had been made the pensioner's name was dropped from the rolls. There was no fraud on the part of pensioner in procuring the pension, nor mistake of fact in its allowance, but there was failure to ascertain a fact, and when pension was allowed to her under act of June 27, 1890, it was error to withhold such pension to reimburse the Government for the amount paid by reason of the former erroneous judgment. That action should be rescinded. *Mary Chryst* (Asst. Sec. Reynolds), 8 P. D., 242.

See *Richard Vernon* and *Norman Davis*, title, REIMBURSEMENT (f).

See also FEE CONTRACT; COMPENSATION; EXAMINATIONS (Special); BOUNTY LAND; REIMBURSEMENT; SUSPENSION.

FURLOUGH.

1. Line of duty while on veteran furlough.
2. Failure to report at expiration of.

1. Line of duty while on veteran furlough.

It has been uniformly held by the Department, under successive administrations, that the language used in section 4700,

1. Line of duty while on veteran furlough—Continued.

Revised Statutes, as to veteran furlough, viz, "with the organization to which they belong," means "while with their commands when leaving for or returning from veteran furlough," and not when separated and at their homes. Citing Elizabeth Rutroff, 3 P. D. (o. s.), 260; Washington Maynor, 6 P. D. (o. s.), 13. *Laurence H. Rousseau* (Asst. Sec. Hawkins), 2 P. D., 6.

Adhered to on reconsideration, *ibid.*, 151.

2. Failure to report at expiration of.

A soldier was furloughed by proper authority, and at expiration thereof the captain of his company, who was absent with leave, directed him to remain and search for parties belonging to the company. Such soldier should not be held responsible for the infraction of the regulations of the War Department, and this Department is not justified in denying a pension because of the irregularity of the soldier's absence, especially when the record fails to show that he was held accountable on his return to his company. *John Hays* (Sec. Schurz), 6 P. D. (o. s.), 411.

See also BOUNTY LAND; CONSTRUCTION OF LAWS; LINE OF DUTY.

GOVERNMENT EMPLOYEES.

See ATTORNEYS.

GRADE RATES.

See RATES.

GRANDCHILDREN.

See ACCRUED PENSION.

GRATUITIES.

See BOUNTY LAND.

GUARDIANS.

1. Corporations may act as.
2. Of insane persons.
3. Of minors.

1. Corporations may act as.

Where a corporation is authorized by the laws of the State under which it is organized to accept the office or appointment of guardian, such appointment, when made, will be recognized in the administration of the pension laws. *Minor of Richard C. Schreiner* (Sec. Teller), 13 P. D. (o. s.), 330.

1. Corporations may act as—Continued.

A trust company, or other similar corporation, may be recognized as a guardian or administrator of a pensioner. Citing John B. Gest, guardian of minor child of Richard C. Schreiner. *Communication to Asst. Atty. Gen. Shields* (Asst. Sec. Bussey), 5 P. D., 124.

2. Of insane persons.

Pension granted on account of disability or of service of an insane soldier can be paid to his lawful guardian only. *Thomas Hynes; Robert G. Dunlap, alias Durdass* (Asst. Sec. Bussey), 5 P. D., 52.

3. Of minors.

Where an application is filed under the act of June 27, 1890, in behalf of a minor child, by one assuming to act as guardian upon appointment as such by a court of competent jurisdiction, and such appointment is not completed in accordance with the existing local law, or for other reasons is invalid, and another person becomes the duly qualified guardian and files a like application, the pension, when allowed, shall commence from the date of filing the first application. *Minors of Henry Sander* (Asst. Sec. Reynolds), 7 P. D., 324.

Before payment of minor's pension a guardian must be appointed, and when qualified to act the pension should be paid to him as in practice under the general law. *Simon P. Showalters* (Asst. Sec. Reynolds), 7 P. D., 478.

See also ADDITIONAL PENSION; COMMENCEMENT; BOUNTY LAND; INCREASE; MINORS; PAYMENT.

GARRISON.

See POST.

GUNBOAT.

1. What are gunboats.

2. The ram "Lioness."

1. What are gunboats.

Any vessel armed and manned and used in offensive and defensive operations against the enemy is a gunboat or war vessel. *John G. Coney* (Asst. Sec. Bussey), 3 P. D., 200.

The words "any gunboat or war vessel," used in the second subdivision of section 4693, Revised Statutes, and in the last clause of section 4695, Revised Statutes, are construed so as to include all vessels in the service of the United States which are armed and manned and used for offensive and defensive purposes. *Ibid.*

2. The ram "Lioness."

The ram *Lioness* was a war vessel, and service thereon as steersman, which was paid for by the Quartermaster's Department, is such service as gives title to pension under the second paragraph of section 4693, Revised Statutes. *Hall W. Hogan* (Actg. Sec. Joslyn), 9 P. D. (o. s.), 484.

See also WAR VESSELS.

HABEAS CORPUS.

See BOUNTY LAND; DISCHARGE.

HALF-BLOOD.

Brothers and sisters of the half-blood are equally entitled, under the pension laws, with those of full-blood. Citing Attorney-General's opinions of November 19, 1830, and May 27, 1848. *Guardian of John Grew* (Actg. Sec. Otto), 7 L. B. P., 2.

See also BOUNTY LAND.

HALF PAY.

See BOUNTY LAND.

HEIRS.

See BOUNTY LAND; LEGAL REPRESENTATIVES.

HELPLESSNESS.

See AID AND ATTENDANCE; MINORS; REDUCTION.

HONORABLE DISCHARGE.

See DISCHARGE.

HOSPITALS.

1. Hospital for the Insane.
2. Hospital matrons not regarded as enlisted
3. Hospital stewards.

1. Hospital for the Insane.

Where a person is committed to the Government Hospital for the Insane as an indigent patient, and thereafter is granted a pension greater than the cost of his maintenance in the hospital, he ceases to be indigent and the hospital is entitled to reimbursement from pension money of cost of his support from the time such indigence ceased, and proper steps should be taken against the guardian to enforce payment of same. *Thomas Hynes; Robert G. Dunlap, alias Durdass* (Asst. Sec. Bussey), 5 P. D., 52.

2. Hospital matrons not regarded as enlisted.

No persons can be regarded as enlisted in the Army who were not referred to in the law relating to the organization of the Army as enlisted persons. There is no law authorizing the enlistment of hospital matrons, but they are merely employees of the hospital department, and are not in any class of persons for whom army pensions are provided. *Isabella Higgins* (Sec. Teller), 11 P. D. (o. s.), 55.

3. Hospital stewards.

The widow of a hospital steward who was employed at Washington, D. C., is pensionable under section 2 of the act of July 27, 1868, under the holding of the Adjutant-General of the Army that Washington, D. C., is a military post within the meaning of said act. *Josephine Plumer* (Sec. Delano), 8 L. B. P., 456.

See also INSANE PERSONS; GUARDIANS; NAVAL HOSPITALS; NAVY PENSIONS; NURSES; SERVICE.

HUSBAND AND WIFE.

Under the pension laws, as under the common law, husband and wife must be regarded as one person, so that pension allowed to one as the parent of a deceased soldier bars pension to the other as parent of another deceased soldier. *George Colony* (Sec. Chandler), 3 P. D. (o. s.), 435.

IDENTITY.

Identity must be shown where service was rendered under an alias. *Etienne Gador, alias Joseph S. Brown* (Sec. Schurz), 7 P. D. (o. s.), 6.

This claimant having originally alleged, as the captain of his company, a name not found on the record, and that he rendered no active service at all, being merely held for several weeks in his native town on waiting orders, while the record shows service and pay for over six months, it is held his identity with the soldier of record is not shown. *William Thurston* (Sec. Teller), 10 P. D. (o. s.), 491.

See also RESTORATION (Declarations); SPECIAL ACT.

ILLEGITIMACY.

See ADULTEROUS COHABITATION; BOUNTY LAND; LEGITIMACY.

ILLITERACY.

See MAGISTRATES.

IMBECILES.

See BOUNTY LAND; DECLARATIONS; INSANE PERSONS.

INCREASE.

1. Generally.
2. Act of June 6, 1866.
3. Act of July 25, 1866.
4. Act of June 6, 1874.
5. Act of June 17, 1878.
6. Act of June 18, 1880.
7. Act of March 3, 1883.
8. Act of August 4, 1886.
9. Act of June 27, 1890.
10. Act of January 5, 1893.
11. In conformity with medical examinations.
12. Nonspecific disabilities.
13. On account of obesity.
14. Prospective disability.
15. Resulting disability.
16. Under special act.

1. Generally.

Disability for which originally pensioned established by record evidence; additional disability claimed, not sustained by the record, but only by the affidavit of two comrades: *Held*, To be insufficient in the absence of corroborative testimony. *Thomas Graves* (Sec. Schurz), 6 P. D. (o. s.), 327.

Where no increase of disability is shown, there can be no increase of pension. *John Allee* (Asst. Sec. Hawkins), 1 P. D., 241.

2. Act of June 6, 1866.

An applicant for an increased allowance under the act of June 6, 1866, must affirmatively prove that his disability is one of the specific character mentioned in the act, or is equivalent thereto, unless the fact be satisfactorily established by the proof accompanying his original application. *Thaddens Wetmore* (Sec. Browning), 6 L. B. P., 204.

A pensioner under a special act which failed to specify a rate, being pensioned at second grade under the act of June 6, 1866, is entitled to the benefit of the act of June 8, 1872, increasing the rate on account of such disability, notwithstanding the fact that his disability is not shown to have been contracted in line of duty. *George J. St. Louis* (Sec. Delano), 1 P. D. (o. s.), 104.

3. Act of July 25, 1866.

The additional pension provided for in the act of July 25, 1866, is not a part of the widow's pension, but is an additional pension, allowed to her for the use and benefit of the minor children, and she is not entitled to it on their account unless they are in her custody; and if she be insane the guardian of herself and the minor children may draw the entire pension for her and their benefit. *Minors of Adam Beier* (Sec. Chandler), 3 P. D. (o. s.), 98.

4. Act of June 6, 1874.

A special act having been passed pensioning a widow at \$8 per month during her widowhood and \$2 per month for each child until it should attain its sixteenth year, said pension of \$8 was withdrawn on the widow's remarriage, in 1871, but the \$2 on account of the minor child was continued: *Held*, That the pension of \$2 should be increased to \$10 per month from June 6, 1874, under the act of that date. *Minor of Patrick Raftery* (Actg. Sec. Cowen), 2 P. D. (o. s.), 189.

5. Act of June 17, 1878.

Increase of pension (invalid) to \$72 from \$50 per month on account of disease of brain is inadmissible on the ground that the act of June 17, 1878, includes only those who have lost both hands or both feet or the sight of both eyes. *William C. Sharp* (Sec. Schurz), 6 P. D. (o. s.), 183.

6. Act of June 16, 1880.

Persons, on June 16, 1880, pensioned at a lower rate than \$50 per month whose disabilities have since that date increased to such a degree as to entitle them to the benefits of the act of June 16, 1874, and persons whose disabilities may hereafter increase to such an extent as to entitle them to the benefits of the last-named act, are not entitled to the benefits of the act of June 16, 1880. *Atty. Gen. Devens*, 16 Op., 594.

In the case of General Burnett, it is held that he is entitled to and should be allowed the increase of pension granted by the act of June 16, 1880, chapter 236, to a certain class of pensioners. *Atty. Gen. Brewster*, 17 Op., 327.

Where party is granted pension of \$50 per month, under special act approved March 3, 1879, he is not entitled to increase to \$72 per month under act of June 16, 1880. *Ward B. Burnett* (Actg. Sec. Bell), 7 P. D. (o. s.), 190.

Beneficiaries under special act are not entitled to the benefits of the act of June 16, 1880, increasing pension from \$50 to \$72 per month. *Ward B. Burnett* (Sec. Schurz), 7 P. D. (o. s.), 316.

6. Act of June 16, 1880—Continued.

The act of June 16, 1880, increasing to \$72 the pensions of those who were then receiving \$50 per month, is applicable to pending claims under which increase to \$50 per month was allowed from a date prior to June 16, 1880. *Jiles J. Whitehead* (Sec. Kirkwood), 8 P. D. (o. s.), 329.

A pensioner having a claim for increase on file at the date of the passage of the act of June 16, 1880, which was not finally adjudicated until after that date and then allowed at the rate of \$50 per month, to commence prior thereto, is entitled to \$72 per month under the provisions of that act. *Ibid.*

The Department adopts the Attorney-General's opinion of April 10, 1882, to the effect that those who were on June 16, 1880, entitled to receive, as well as those who were then receiving, pension at the rate of \$50 per month are included within the act of the latter date, and holds that those who were then receiving \$31.25 per month under the general law are entitled under said act to \$72 per month. In a subsequent decision it is stated this pension of \$72 per month should date from June 17, 1878. *Ward B. Burnett* (Sec. Teller), 9 P. D. (o. s.), 233, 266.

The act of June 16, 1880, has been construed to extend, not only to those who were on the pension rolls at \$50 per month at the date of the passage of said act, but to those also who then had on file an application for pension at that rate and were found to be entitled thereto from a date prior to the passage of said act, but it can not be held to include those who had no application then pending, although entitled by reason of degree of disability to the \$50 rate. *Thomas S. Hopkins* (Asst. Sec. Muldrow), 16 P. D. (o. s.), 260.

To entitle a claimant to increase from \$50 to \$72, as provided by the act of June 16, 1880, he must have been then (at date of passage of the act) in receipt of \$50 per month, or have had an application for increase pending at the date of its passage. *James B. Hanvey* (Asst. Sec. Hawkins), 1 P. D., 216.

Increase of pension, as provided for by the act of June 16, 1880, applies only to such claimants as were then (at the date of the passage of the act) receiving a pension of \$50 per month, or who had an application pending for increase at the date of the passage of said act. *Julia W. Jones* (Asst. Sec. Hawkins), 1 P. D., 162.

The benefits of the act of June 16, 1880, are due to those pensioners only who were receiving a pension of \$50 per month at the date of its passage. *Wooster Mandeville* (Asst. Sec. Hawkins), 1 P. D., 397.

A pensioner who was not on June 16, 1880, receiving a pen-

6. Act of June 16, 1880—Continued.

sion of \$50 per month under the act of June 18, 1874, is not entitled to the benefits of the act of June 16, 1880, increasing certain pensions to \$72 per month. *Oscar Dunlap* (Asst. Sec. Hawkins), 2 P. D., 201.

The act of June 16, 1880, applies only to those who were at that date receiving pension at the rate of \$50 per month and to those who had applications then pending under the act of June 18, 1874. Citing Digest 1885, 253; Rowland M. Jones, (1 P. D., 162); James B. Hanvey (Ib., 216); Wooster Mandeville (Ib., 397). *Wallace G. Bone* (Asst. Sec. Hawkins), 2 P. D., 310.

A pensioner who was not on the pension roll at the rate of \$50 per month at the date of the approval of the act of June 16, 1880, nor had an application for increase to said rate pending at said date, is not included within the class of pensioners mentioned in said act, nor entitled to have his pension increased to \$72 per month thereunder. *Orrey S. Barrett* (Asst. Sec. Bussey), 3 P. D., 20.

If, under the act of June 18, 1874, a claimant is entitled to \$50 per month, he must be receiving said rate June 16, 1880, in order to be, under the act of the latter date, entitled to an increase from \$50 to \$72 per month. *Abram Duryee* (Asst. Sec. Bussey), 3 P. D., 276.

7. Act of March 3, 1883.

The act of March 3, 1883, increased by its legal operation all third-grade ratings. *John B. Howes* (Asst. Sec. Bussey), 6 P. D., 50.

8. Act of August 4, 1886.

The act of August 4, 1886, does not authorize the increase from \$24 to \$30 per month for disability equivalent to the loss of a hand or foot. *Joseph Wirth* (Asst. Sec. Hawkins), 1 P. D., 381.

Where, at the date of the passage of the act of August 4, 1886, a pensioner was receiving \$24 per month on account of a gunshot wound of the left hand, "resulting in total disability, such as to render incapacity to perform manual labor equivalent to the loss of a hand or foot, third grade," as held by the medical referee, it is held that as claimant was on the rolls "for total disability of left hand," said act increased his rate to \$30 per month, as the third-grade rating under the act of March 3, 1883, became the second grade under the later act. *John R. Weddle* (Asst. Sec. Hawkins), 2 P. D., 97.

9. Act of June 27, 1890.

In claims under the act of June 27, 1890, where the only disability alleged or shown is that for which the applicant is pensioned under some other law, in the absence of conclusive evidence showing that the increased degree of disability reported by the examining surgeons existed prior thereto, increased rate shall not commence prior to the date of medical examination showing title to same, and if the required evidence is not in the case when the claim is adjudicated and the claimant elects to take pension under said act, the issue under said act shall allow the old-law rate from the date of filing the application under said act to the date of such medical examination, and thereafter such increased rate as is warranted by the certificate of said examination. In such case an application under the new law will be accepted as an application for increase under the old law, so as to allow the attorney therein a fee in case claimant elects to retain his general-law pension at an increased rate. Where, from the nature of the disability or from the length of time elapsing between the date of filing an application under the act of June 27, 1890, and the date of medical examination, the degree of disability during said period can not be determined by the medical division, the applicant should be required to furnish evidence showing the same. *Charles B. Mullins* (Asst. Sec. Bussey), 6 P. D., 285.

Under the act of June 27, 1890, a condition of inability to earn a support by manual labor is the test of the soldier's title to pension, and provided always that such condition is not the result of his own vicious habits, the manner in which it is brought about is not material. The pension once granted because the soldier was in part unable to earn a support by manual labor, further inability, whether it be due to a disability already recognized or to one newly alleged, is but an increase of pensioned cause. *George Jacob* (Asst. Sec. Reynolds), 7 P. D., 39.

The Bureau of Pensions has no authority to treat an application made under the act of June 27, 1890, as an application for increase of pension under former laws. Neither has it the right to recognize an attorney appointed to prosecute a claim under the act of June 27, 1890, as attorney in a claim under prior laws without an express appointment in such claim. So much of the decision of March 6, 1893, in the pension claim of *Charles B. Mullins* (6 P. D., 285) as permits the adjudication of certain claims under the act of June 27, 1890, as claims for increase of pension under prior laws, is set aside. *William Smith* (Asst. Sec. Reynolds), 7 P. D., 126.

Inability to earn a support by manual labor is the sole basis

9. **Act of June 27, 1890**—Continued.

of pension under section 2 of the act of June 27, 1890, and where pension has been granted because of partial inability to earn such support, any newly alleged cause of disability is but contributory. A claim based on such a cause is a claim for straight increase, no matter how many declarations may have been filed, how many causes alleged, or how many attorneys employed. *Isaac Turner* (Asst. Sec. Reynolds), 7 P. D., 523.

10. **Act of January 5, 1893.**

The act of January 5, 1893, entitled "An act granting increase of pension to soldiers of the Mexican war in certain cases," does not authorize a similar increase to the widow of such a soldier. *Arlina Schaffer (widow)* (Asst. Sec. Reynolds), 7 P. D., 203.

As claims for increase of pension under the act of January 5, 1893, are claims for increase by reason of the disability on account of which pension was originally granted, the fourth proviso of the act of March 3, 1891, reducing attorney's fees in such cases to \$2, is applicable, and no fee in excess of that sum may be paid. *Daniel Hauenstein* (Asst. Sec. Reynolds), 7 P. D., 256.

The act of January 5, 1893, providing for increase from \$8 to \$12 per month of pensions on account of service in the Mexican war, does not include pensions granted under the act of March 3, 1891, on account of service in Powell's Battalion, Missouri Mounted Volunteers. *George H. Brookman* (Asst. Sec. Reynolds), 7 P. D., 260.

Claimant, a Mexican soldier, pensioned on account of disability, applied for an increase of his pension under the act of January 5, 1893: *Held*, That he has no title, as he is pensioned for a disability and not for service. *James Shaw* (Asst. Sec. Reynolds), 7 P. D., 288.

Under the act of January 5, 1893, increasing pensions of survivors of the Mexican war, destitution in greater or less degree due to the absence of the necessities of life, notwithstanding the aid afforded by the pension of \$8 per month, is the ultimate foundation which must be proven to entitle to the relief provided. This requirement the law subjoins to another, viz, that claimant shall be "wholly disabled for manual labor." *Alfred M. Jarboe* (Asst. Sec. Reynolds), 7 P. D., 322.

The increase of pension provided by the act of January 5, 1893, for survivors of the war with Mexico, is to be granted only to those survivors, otherwise entitled, who, on the 5th of January, 1893, were in receipt of a pension of \$8 per month on account of service in the war with Mexico. *George W. Twist* (Asst. Sec. Reynolds), 8 P. D., 229.

10. Act of January 5, 1893—Continued.

One who has an income of \$400 yearly is not included in those entitled to increase under the act of January 5, 1893. *George W. Rust* (Asst. Sec. Reynolds), 8 P. D., —.

11. In conformity with medical examinations.

Where ratings have been made in conformity with the medical recommendations from time to time, and they are pronounced just and sufficient by the medical referee, the claimant is not entitled to an increase. *John T. Odwell* (Asst. Sec. Hawkins), 1 P. D., 334.

12. Nonspecific disabilities.

Where a claimant for increase on account of nonspecific disabilities dies before an examination under his claim is made, no increase can be allowed. *John N. Hullfish* (Actg. Sec. Joslyn), 11 P. D. (o. s.), 152.

Under section 4698½, Revised Statutes, increase for a nonspecific disability must commence from the date of the examining surgeon's certificate establishing the same, made under the pending claim, and the Commissioner of Pensions has no authority to increase a pension regardless of a medical examination and without a claim pending and medical examination had. *John Lunderville* (Asst. Sec. Bussey), 3 P. D., 209.

13. On account of obesity.

Where obesity results in increased disability, such increase is pensionable the same as any other resulting or secondary cause of disability. Distinguishing this case from *George Clayton*, 5 P. D. (o. s.), 121, in that no evidence was filed in that case to show obesity was due to the pensioned wound. *Frederick Nolte* (Asst. Sec. Bussey), 4 P. D., 252.

14. Prospective disability.

A prospective increase of disability is not pensionable. *Richard B. Hunton* (Sec. Browning), 6 L. B. P., 215.

15. Resulting disability.

As disease of heart is shown to exist in a pensionable degree, and the same is shown to be the result of chronic diarrhea and rheumatism contracted in the service, increase is allowed. *John Wallace* (Asst. Sec. Hawkins), 1 P. D., 16.

16. Under special act.

In cases where pension has been granted under a special act and increase is claimed on account of disabling causes other than those for which pensioned, such claim will not be treated

16. Under special act—Continued.

as a claim for increase, but a distinct basis for additional pension under the general law; and under section 5 of the act of July 25, 1882, a claimant may not receive in addition to the pension granted by special act pension under the general law. *Daniel W. Martin* (Asst. Sec. Hawkins), 1 P. D., 408.

A special act increasing pension is no bar to a further increase on account of an additional increase of disability pensionable under the general law. Citing *Ollie M. French*, 3 P. D., 94. *George S. Hawley* (Asst. Sec. Bussey), 6 P. D., 215.

See also ACCRUED PENSION (Minor); ATTORNEYS; COMMENCEMENT; CONTRIBUTORY NEGLIGENCE; DEPENDENT RELATIVES; DECLARATIONS; MINORS; MEDICAL REFEREE; RATING; REBATING; RESTORATION; REVOLUTIONARY WAR.

INDIANS.**War of 1812.**

As the papers do not satisfactorily show that this claimant was either an officer or an enlisted or a drafted man in the war of 1812, nor that he was honorably discharged, he is not pensionable under section 4736, Revised Statutes. *Black Squirrel* (Sec. Delano), 2 P. D. (o. s.), 498.

See also ATTORNEYS; BOUNTY LAND.

INDIAN WARS.

1. Commencement of Florida wars.
2. Volunteers pensionable for wounds only.

1. Commencement of Florida wars.

War with the Florida Indians commenced with the attack of the Indians on Lieutenant Hartneff's detachment of the Second Arkansas, in December, 1855, and as the death of claimant's husband occurred prior to that time he can not be regarded as having been engaged in that war. *Hester Stott* (Actg. Sec. Gorham), 3 P. D. (o. s.), 466.

Congress having accepted November 1, 1835, as the date from which volunteers and militia were entitled to pay for services in the repression of Indian hostilities in Florida, said date may also be accepted as fixing the commencement of the war in adjudicating claims under the act of July 27, 1892. *Mary W. Russ* (Asst. Sec. Reynolds), 7 P. D., 382.

2. Volunteers pensionable for wounds only.

Volunteers in the Florida wars who enlisted under the act of May 23, 1836, are not pensionable under the act of March 19, 1836, nor section 1657, Revised Statutes, but, under the

2. Volunteers pensionable for wounds only—Continued.

terms of the act under which they enlisted, are pensionable only for wounds received in the service. *William Aaron* (Asst. Sec. Bussey), 5 P. D., 250.

See also BOUNTY LAND; SERVICE.

INDIGENCE.

Where the schedule of property showed a pensioner possessed 165 acres of land, 47 head of cattle, horses, sheep, etc., with a good supply of farming utensils and household furniture, such pensioner was not in indigent circumstances, and his pension was properly suspended under the act of May 1, 1820. *Charles A., grandson of John Burnham* (Asst. Sec. Bussey), 4 P. D., 93.

See also EVIDENCE.

INNOCENT HOLDER

See BOUNTY LAND.

INQUIRY, COURT OF

See COURTS.

INSANITY.

See AID AND ATTENDANCE; COMMENCEMENT; DEATH CAUSE.

INSANE PERSONS.

1. Failure to claim pension.
2. Insane minors.
3. Payment of pension to.
4. Powers of attorney from.
5. Relative may make affidavit for.
6. Prosecution of claims by.
7. Regular aid and attendance.
8. Frequent and periodical aid and attendance.

1. Failure to claim pension.

Section 4719, Revised Statutes, should not be so construed as to require that the name of an insane pensioner without a guardian should be dropped from the rolls on account of the failure to claim pension within the period described, and where such pensioner dies without having drawn pension for more than three years and without having applied for restoration, reimbursement for the funeral expenses, etc., under section 4718, Revised Statutes, may be allowed the same as though he (or, in this case, a mother pensioner) had been continuously on the rolls until date of death. *Mary Davis* (Sec. Kirkwood), 8 P. D. (o. s.), 92.

2. Insane minors.

Under the proviso of section 3 of the act of June 27, 1890, the pension of an insane, idiotic, or permanently helpless minor which has ceased, by reason of the minor attaining the age of 16 years before the passage of the act, is renewable from the date of the application therefor upon proof of the continued and uninterrupted insanity, idiocy, or helplessness of the claimant. Cases of Schuyler C. Kephart, 4 P. D., 419, and Alphonseine Gateson, 5 P. D., 417, overruled. *Minors of Jacob Loeb* (Asst. Sec. Reynolds), 7 P. D., 163.

The payment of the \$2 increase to the mother on account of an insane or helpless minor will be continued after such minor has attained its sixteenth year, and so long as such insanity or helplessness continues, subject to the limitations imposed by section 4706, Revised Statutes, and act of August 7, 1882, amending section 4702, Revised Statutes. *Instructions to Commissioner* (Asst. Sec. Reynolds), 7 P. D., 167.

The rate to be allowed an insane or helpless minor is governed by the law under which the pension is granted. *Ibid.*

Where more than one minor has been pensioned, and the pensionable period of one or more of them has not expired when an insane or helpless cominor has attained his sixteenth year, said minors are entitled to receive their pensions until the expiration of their pensionable minority, and the pension of the insane or helpless minor should continue at the rate of \$2 until the youngest child attains its pensionable majority, at which date title to the continuance attaches at the rate provided by the law under which the pension was granted. *Ibid.*

A deceased soldier's minor 17 years of age, who has been sent to school eight years and can not be taught to read, write, or count, who has no memory nor sufficient mind to properly care for his body or the offices of nature, and who is incapable of transacting any business, is so "idiotic or permanently helpless" as to come within the proviso of the third section of the act of June 27, 1890, entitling him to a continuance of the pension heretofore granted for his benefit. *Clarence Loveitt* (Asst. Sec. Reynolds), 7 P. D., 405.

3. Payment of pension to.

Pension granted insane soldier under treatment in the Government Hospital for the Insane can be made payable to the superintendent thereof only when he is the legally appointed guardian, trustee, or committee of pensioner. *Thomas Hynes*; *Robert G. Dunlap, alias Durdass* (Asst. Sec. Bussey), 5 P. D., 52.

Where a person has been judicially declared insane or is con-

3. Payment of pension to—Continued.

fined in an institution for the safe-keeping, care, and treatment of the insane he must prosecute his or her claim by next friend, guardian, or committee; but payment will be made only to the qualified guardian or committee. *Joel Ames, insane* (Asst. Sec. Reynolds), 8 P. D., 171.

4. Powers of attorney from.

A power of attorney executed by a person who has not been judicially declared insane nor confined in an asylum for the insane or other public institution for the care and keeping of insane persons, though the party was insane at the time, will be recognized until repudiated by the claimant, his guardian, or committee before the completion of the claim; but if the attorney so appointed enters into the prosecution of the claim in good faith, without notice of the insanity of the claimant, and has rendered valuable service in the claim, and is properly conducting the prosecution of the same, he will be protected in his rights as in other cases. *Joel Ames, insane* (Asst. Sec. Reynolds), 8 P. D., 171.

A power of attorney to prosecute a pension claim, executed by a claimant after having been judicially declared insane, or while confined in an asylum for the insane, will not be recognized, and the attorney filing the same should be so notified. *Ibid.*

5. Relative may make affidavit for.

The Secretary held that in all cases of insanity or of mental infirmity destroying the faculties, the statement of the nearest relatives of a person drawing a pension may be received under oath, recapitulating his own account of his services as given prior to such incapacity, and if such statement would have been sufficient to warrant the pension if made by the party himself it shall be deemed sufficient in those cases. *Ruling* (Sec. of War Cass), Pension Laws, etc. (1849), 101.

6. Prosecution of claims by.

A declaration for pension may be made by a person non compos mentis, but if it appear that he was at the time of executing the same, or thereafter becomes incapable of understanding the nature of his claim, and incapable of prosecuting the same, the case must thereafter be prosecuted by the next friend, guardian, or committee of such person. *Joel Ames, insane* (Asst. Sec. Reynolds), 8 P. D., 171.

Where a person has not been judicially declared insane nor confined in any asylum or public institution for the care, keeping, and treatment of the insane, he may prosecute a claim for pension in person. *Ibid.*

7. Regular aid and attendance.

If, by reason of insanity due to the service, a claimant is shown to be in a condition requiring regular aid and attendance, his right to a first-grade pension can no more be questioned than if the same degree of helplessness were shown to exist from physical causes. *George O. Harrison* (Asst. Sec. Bussey), 5 P. D., 279.

8. Frequent and periodical aid and attendance.

A claimant, in a State hospital for the insane, who is unable to shave, bathe, or dress himself properly, unless under and by the personal direction of an attendant, and by reason of his mental condition is incapacitated for the performance of any manual labor, and who can not be permitted to go alone out of his ward or to walk about the grounds, except under the immediate care and watch of an attendant, requires such frequent and periodical aid and attendance as is contemplated by the act of July 14, 1892, so as to be entitled to a pension at the rate of \$50 a month. *Thomas L. Hurst* (Asst. Sec. Reynolds), 7 P. D., 583.

See also AID AND ATTENDANCE; ATTORNEYS; BOUNTY LAND; COMMENCEMENT; GUARDIANS; HOSPITALS; LIMITATION; MINORS.

INTEMPERANCE.

See ORIGIN.

INTERIOR DEPARTMENT.

See JURISDICTION.

INTERLOCUTORY ORDERS.

See APPEALS.

INVALID PENSIONS.

See RETIRED OFFICERS.

JUDGE'S MINUTES.

See JURISDICTION.

JURISDICTION.

1. Of courts.
2. Of Secretary of the Interior.
3. Of Commissioner of Pensions.
4. Of accounting officers of the Treasury.
5. Of the War Department.

1. Of courts.

The courts have no appellate power or right to review the decision of the Commissioner of Pensions in a case properly considered by him. *U. S. ex rel. Dunlap v. Black*, 128 U. S., 40.

There being no personal service in a suit for divorce, and publication notice not being shown to have been given, although ordered, and the record showing the defendant was a nonresident of the State, it is held the record shows on its face that the court rendering a decree in such suit had no jurisdiction, and such decree is void. *Mary E. Scott* (Asst. Sec. Bussey), 6 P. D., 185.

A decree of divorce rendered by an Ohio court having jurisdiction of the subject-matter of the suit in which entered, and of the parties thereto, can not, under the laws of said State, be annulled and set aside twenty-two years thereafter, and eleven years after the death of one of the parties to said original suit, by another court in such State, so as to give the woman so divorced a pensionable status as the widow of the deceased soldier who procured such divorce. *Susan McLeod* (Asst. Sec. Reynolds), 7 P. D., 590.

Where it appears from inspection of the record that the defendant at the time of the alleged service upon her was beyond the reach of the process of the court, and that service upon such defendant was made by publication, it must appear that the requirements of the statutes authorizing service by publication have been strictly complied with. *Josephine S. Boyd* (Asst. Sec. Reynolds), 8 P. D., 1.

The statute of Nebraska, which requires that publication must be made for four consecutive weeks and must notify the person or persons thus to be served when they are required to answer and which provides that the answer or demurrer to the plaintiff's petition must be filed on or before the third Monday after the return day of the summons or publication of the notice, is not complied with where the notice, which was published for the first time on October 2, 1886, notified the defendant that she was "required to answer said petition on or before Monday, the 18th day of October, A. D. 1886," and such notice conferred no jurisdiction on the court over the defendant or the subject-matter of the suit. *Ibid.*

A divorce decreed against a nonresident defendant of said State with no other notice than thus stated, in proceedings where no appearance was made, is void. *Ibid.*

In such a case the rejection of a widow's claim for pension on the ground that she was not the legal widow of soldier because he was divorced from her by such decree was error. *Ibid.*

1. Of courts—Continued.

In a State where the statute requires in a petition for divorce, in addition to the facts on which plaintiff claims relief, a statement specifying the town and county in which he has resided, the entire length of his residence therein, after deducting all absence from the State, and that such residence has been in good faith and not for the purpose of obtaining a divorce only, the court will not acquire jurisdiction in a suit for divorce unless the petition contains such averments. *Mary Holmes* (Asst. Sec. Reynolds), 8 P. D., 134.

When a court exercises a special power conferred upon it by statute, and not according to the course of the common law, it must strictly comply with the requirements of the statute, and such compliance must affirmatively appear from the record itself. *Ibid.*

In the State of Iowa the judge's calendar is not a part of the court records, and an entry therein will not constitute a judgment. In this case, the only record of a decree of divorce having been entered was contained in the minutes of the judge, which stated, "Decree of divorce as prayed for at plaintiff's cost," and it was held that a divorce was not proved. *Ibid.*

Where a transcript of the proceedings in a suit for divorce in the State of Iowa fails to show that a formal decree of divorce has been spread upon the records, it will not be accepted to prove such divorce. *Ibid.*

2. Of Secretary of the Interior.

A judgment of the Court of Claims adverse to the decision of the Department, rejecting a bounty-land claim, was, upon appeal to the Supreme Court of the United States, reversed for want of jurisdiction (6 Wallace, 573), and is therefore of no binding force in the claim, whilst the decision of the Secretary is entitled to all the weight due to the judgment of an officer of a special tribunal acting within the acknowledged scope of the authority delegated to him. *Julian Alire* (Sec. Delano), 7 L. B. P., 332.

The Secretary of the Interior can not question the correctness of the records of the War Department. *Leopold Ricot* (Actg. Sec. Cowen), 3 P. D. (o. s.), 50.

The law has not given this Department jurisdiction to consider a question of damages suffered in consequence of a pension being withdrawn. *Charles A. Burnham* (Asst. Sec. Hawkins), 31 P. D. (o. s.), 247.

The power of the Secretary of the Interior to suspend an

2. Of Secretary of the Interior—Continued.

attorney from practice for violation of the law, rules, or regulations relating to fees in pension cases is not subject to legal limitations. The Secretary has both appellate and supervisory power over the Bureau of Pensions, and the right to consider all questions relating to fees, whether on appeal or not. *Zadoc Day* (Asst. Sec. Bussey), 3 P. D., 76.

The Department has no right, authority, or power to grant a pension to any person for whom the law does not provide a pension, no matter what may be the circumstances of the case, nor how much it may appeal to the sympathies. *Mary A. McElfatrick* (Asst. Sec. Bussey), 5 P. D., 278.

The Secretary of the Interior is not, under his supervisory authority in pension matters, restricted to the consideration of cases on appeal, but can, at any stage of the proceedings in any case, direct what action shall be taken, and such direction is binding upon the Commissioner of Pensions. *Atty. Gen. Shields to Sec. of Interior*, 6 P. D., 297.

Neither the Secretary of the Interior nor the Commissioner of Pensions can, by order or by practice, supersede an act of Congress. The power of the Department, so far as its orders and practice are concerned, is limited to an execution of the law; it ceases when an effort is made to supersede the law. *Charles T. Bennett* (Asst. Sec. Reynolds), 7 P. D., 1.

3. Of Commissioner of Pensions.

It is not within the province of the accounting officers of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions, but of the Commissioner of Pensions. *Atty. Gen. Brewster*, 17 Op., 339.

The Commissioner of Pensions is a quasi-judicial officer possessing the power to correct errors in adjudicated cases to the extent of striking pensioners from the roll, and may suspend payment where the certificate issued through error or inadvertence. *Catherine Harris* (Sec. Delano), 2 P. D. (o. s.), 256.

Where the law fails to name certain disabilities and affix their ratings in express terms, the Commissioner of Pensions has the power, which it is his duty to exercise, under the general pension laws, to designate such disabilities by name and affix the corresponding rates, which he has the power also to countermand, add to, or to abridge. *Daniel Lauback* (Asst. Sec. Hawkins), 1 P. D., 318.

When the Department has, on appeal, passed upon the merits of a claim and directed its allowance, the Commissioner of Pensions may not, on his own motion, reconsider the case and

3. Of Commissioner of Pensions—Continued.

disallow the claim, but must either obey the direction to allow or request the Department to reconsider its action. *Zenas Hamilton* (Asst. Sec. Hawkins), 2 P. D., 217.

The rule of *res adjudicata* can not be applied to any question as to the future status of and payments to a pensioner, nor to restrict or limit the statutory powers and jurisdiction of the Commissioner to examine, at his discretion, rate of pension to be received in future in accordance with results of said investigation, as may be deemed by him commensurate with justice and right. Distinguishing *Edward A. Colnor*, 2 P. D., 21. *Wallace G. Bone* (Asst. Sec. Hawkins), 2 P. D., 310.

The Commissioner shall have power, subject to review by the Secretary of the Interior, to reject or to refuse to recognize any contract for fees provided by the act of July 4, 1884, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract. *George Hindson* (Asst. Sec. Bussey), 3 P. D., 101.

The exercise of the discretionary power of the Commissioner of Pensions in determining the allowance of a fee of \$25 in "such other cases of difficulty and trouble" as he "may see fit" to recognize is exclusively within that officer's control, and the Department will not interfere in the exercise of the same, except in a case of extraordinary or flagrant injustice. *Julia Newcomb* (Asst. Sec. Bussey), 5 P. D., 419.

See case of *George D. Hilton*, 8 P. D., 182.

4. Of accounting officers of the Treasury.

The matter of payment of pension after issuance of certificate comes under the supervision and control of the accounting officers of the Treasury Department, and the decision of the Comptroller of the Treasury as to payment of accrued pension can not be reviewed by this Department. *Joseph E. Osborne* (Actg. Sec. Cowen), 8 L. B. P., 224.

See opinion of Attorney-General Brewster (17 Op., 339), SUB-TITLE 3.

5. Of the War Department.

See ENLISTMENT; RANK; SERVICE; SECRETARY OF WAR.

See also ACCRUED PENSION; COMMISSIONER OF PENSIONS; COURTS; DIVORCE; FRAUD AND MISTAKE; MEDICAL REFEREE; REDUCTION; REIMBURSEMENT; SECRETARY OF THE INTERIOR; SPECIAL ACT.

KILLED IN BATTLE.

See EVIDENCE.

LACHES.

See BOUNTY LAND (Title by Descent).

LAND OFFICE

See BOUNTY LAND.

LAWS.

See ADJUDICATION.

LEGAL DISABILITIES.

The phrase "persons laboring under legal disabilities" in section 4766, Revised Statutes, as amended by the act of August 8, 1882, should not be construed to mean only persons under such disabilities as are indicated in the statutes of the United States, viz, insane pensioners, imprisoned pensioners, and minors, but all such as may be under legal disabilities by the law of the State in which they reside. *Instructions* (Sec. Vilas), 2 P. D., 94.

LEGAL REPRESENTATIVES.

Where the pension acts omit to make mention of representative persons, the latter are not entitled, according to the tenor and true intendment of the acts. *Atty. Gen. Cushing*, 7 Op., 619.

See also ACCRUED PENSION; ARREARS; ATTORNEYS; CONSTRUCTION OF LAWS.

LEGITIMACY.

1. Generally.
2. Of colored children.
3. Under the laws of Indiana.
4. Under the laws of Ohio.
5. Under section 4704, Revised Statutes.

1. Generally.

It is the settled practice under the act of July 14, 1862, and the subsequent supplementary laws, to confine their operation to legitimate children, to widows whose marriage was a lawful one, and to legitimate brothers and sisters, the only deviation being as to the mother of a deceased soldier. It is, therefore, held that the children mentioned in the act of June 25, 1866, are those who are legitimate and not those who are illegitimate. *Mehitable J. Pinkham* (Actg. Sec. Otto), 6 L. B. P., 280.

Legitimacy being a prerequisite to the legal title to pension of minor children, the fact that the parents of these claimants

1. Generally—Continued.

were never lawfully married bars them from receiving any pension except by special act of Congress for their benefit. *Alleged minors of Hartwell Trickey* (Asst. Sec. Reynolds), 8 P. D., 84.

2. Of colored children.

Where claim is filed by guardian in behalf of minor of soldier, and it appears that prior to the marriage to the soldier the mother of minor was married, and no decree of divorce appearing or proof of death: *Held*, That proof of death of first husband prior to second marriage is essential to the favorable consideration of the widow's or minor's claim. *Minors of John N. Burch* (Sec. Schurz), 7 P. D. (o. s.), 29.

The legitimacy of a minor's birth depends, for pensionable purposes, upon proof of the parent's marriage and the consequent innocence of the cohabitation from which the child sprung, rather than upon the mere continuity of residence or of cohabitation between the parents after said birth. *John Pendleton, colored minor* (Asst. Sec. Bussey), 5 P. D., 217. Overruled: 7 P. D., 545.

The issue of customary negro marriages are deemed legitimate under the laws of Kentucky, and as the alleged marriage of claimant was not such as is mentioned in section 4705, Revised Statutes, it is governed by the laws of Kentucky, as he was residing in that State at the date his right to pension accrued. See section 2 of the act of August 7, 1882. *Gus, father of Frank Johnson* (Asst. Sec. Reynolds), 8 P. D., —.

3. Under the laws of Indiana.

As this claimant's parents cohabited under a promise of future marriage merely, without any present contract of marriage, such cohabitation was criminal under the laws of Indiana, and claimant, being born of such cohabitation, was illegitimate under the laws of that State, as there was no subsequent marriage of her parents. *Emma Gierhart* (Sec. Teller), 10 P. D. (o. s.), 398.

4. Under the laws of Ohio.

Under the statutes of Ohio a child is legitimate although the marriage of its parents is deemed null in law. *Emily J. Griswold* (Actg. Sec. Gorham), 3 P. D. (o. s.), 492.

Under section 4175, Ohio statutes, children born prior to the marriage of the parents are deemed legitimate if acknowledged by the father as his children. *Elizabeth Felber* (Asst. Sec. Bussey), 4 P. D., 329.

5. Under section 4704, Revised Statutes.

Acknowledgment by the father and the subsequent marriage of the parents of illegitimate children are the criterions of their legitimacy under section 4704, Revised Statutes. Neither the soldier's quondam mistress, whom he never married, nor her children begotten, but never acknowledged, by him, have any status that the Department can recognize for pensionable purposes. *Nancy Baker* (Asst. Sec. Hawkins), 1 P. D., 462.

Under section 4704, Revised Statutes, marriage of the parents of a child born out of wedlock, as well as acknowledgment by the father, must follow in order to make such child legitimate for pensionable purposes. Adhering to former decision herein of 4 P. D. (o. s.), 474. *Minor of Michael Harmon* (Asst. Sec. Bussey), 4 P. D., 132.

Questions of legitimacy are governed by section 4704, Revised Statutes, and not by the *lex loci*, and the fact that under the laws as to descent and distribution of property of the State where the child resides at the time of filing the claim it would be recognized as its father's heir, although its parents were never married, has no bearing upon the question of its legitimacy arising in its pension claim. *Emma Gierhart* (Asst. Sec. Bussey), 6 P. D., 155.

See also EVIDENCE; ILLEGITIMACY; MINORS.

LEX LOCI

See MARRIAGE; MINORS.

LIEN.

See FEE.

LIMITATION.

1. Generally.
2. Generally as to filing declarations.
3. Ante-rebellion claims.
4. Fathers' claims.
5. Increase claims.
6. Insane persons, claims by.
7. Invalid claims.
8. Minors' claims.
9. Mothers' claims.
10. Motions to reconsider.
11. Nonenlisted men.
12. Orphan brothers and sisters.
13. Renewal of pension.
14. Widows' claims.

1. Generally.

The power conferred upon the Secretary of the Navy to establish rules and regulations for the examination and adjudication of claims for admission upon the roll does not authorize the enactment of a rule or statute of limitations. *Atty. Gen. Toucey*, 5 Op., 62.

Certificate having issued March 17, 1870, subsequent to the death of the pensioner named therein, certificate was canceled by the Secretary, who stated that the limitation as to filing claim begins at the death of the soldier leaving no widow, child, or mother. *Elisha Chick* (Sec. Cox), 7 L. B. P., 284.

There is no authority of law for deducting from the period of limitation prescribed in section 6 of the act of July 27, 1868, a term of civil and military service subsequent to the first discharge. *William L. Smith* (Sec. Delano), 7 L. B. P., 369.

The period of limitation runs from, but does not include, the date of discharge or death, under the Attorney-General's opinion that "when the computation of time is to commence from an act done, the day on which the act is done is to be excluded." *William Millar* (Actg. Sec. Cowen), 2 P. D. (o. s.), 146.

Section 13 of the act of June 6, 1866, reenacted in section 4713, Revised Statutes, did not deprive this claimant of any right previously existing, as his pension was allowed under acts relating to the military establishment of the United States, and the regulations of the President, made in accordance with law, commenced the pension of an invalid under those acts at the date at which the claim was established. *Rowland A. Colby* (Actg. Sec. Gorham), 3 P. D. (o. s.), 483.

2. Generally as to filing declarations.

The rule of the Pension Office that an application for a pension can not be entertained after the lapse of twenty-five years from the time when the disability was incurred is unauthorized by law and therefore invalid. *Atty. Gen. Toucey*, 5 Op., 62.

The proviso in section 4714, Revised Statutes, that any declaration made before an officer authorized to administer oaths for general purposes shall be accepted to exempt a claim from the limitation as to date of filing prescribed in section 4709, is applicable to the limitation prescribed by section 2 of the act of March 3, 1879, as to date of filing claim, and a declaration made in accordance therewith may be accepted to exempt a claim from such limitation. *Atty. Gen. Brewster*, 17 Op., 355.

The negligence of attorneys in filing an application does not relieve the claim from limitation as to the commencement of

2. Generally as to filing declarations—Continued.

pension. *Sarah H. Stevens* (Actg. Sec. Otto), 7 L. B. P., 281.

Under the seventh section of the act of March 3, 1873, a claim filed within five years from the date the soldier was finally paid, although discharge was made out prior to that date and more than five years prior to the date of filing such application, entitles to arrears from said date of payment, the records showing that the members of the organization to which he belonged were considered as having been under military authority until that date. *Henry Ferguson* (Actg. Sec. Cowen), 1 P. D. (o. s.), 279.

Delay in filing a declaration, whether due to the attorney or to claimant, can not affect commencement of the pension, which, by law, can commence only from the time the declaration is filed (if filed more than five years after right accrued). *H. W. Smith* (Sec. Chandler), 3 P. D. (o. s.), 338.

It appearing from certain correspondence by and with the Commissioner of Pensions, found among the records of the office, that an application for pension was filed in the Pension Office in 1863, within three years of the date of discharge of the soldier, although no such claim or record of any such claim is found: *Held*, That the evidence is sufficient to show an application was made, which will save the case from the bar of limitation fixed by section 4713, Revised Statutes. *Samuel C. Barney* (Sec. Teller), 10 P. D. (o. s.), 78.

Failure to file a declaration within the time to avoid the statutory limitation is not excused by alleged delay in the mails. *George C. Smith* (Asst. Sec. Hawkins), 1 P. D., 69.

3. Ante-rebellion claims.

Claims for pension under ante-rebellion laws, as well as those under the act of July 14, 1862, are subject to the limitation as to date of filing prescribed in section 13 of the act of June 6, 1866. *Minor of Bernhard Barr* (Sec. Browning), 6 L. B. P., 441.

The limitation act of June 6, 1866, is applicable to the claim of a soldier who, after his discharge in 1849, was employed in a civil capacity, and whose right to pension under the act of May 13, 1846, on account of a disability incurred in his prior service, accrued, therefore, at the date of said discharge. *Roland A. Colby* (Sec. Delano), 1 P. D. (o. s.), 89.

4. Fathers' claims.

In claims of fathers the period of limitation under section 6 of the act of July 27, 1868, begins to run June 6, 1866, the date of the passage of the act conferring title upon fathers. *George Frazier* (Sec. Delano), 8 L. B. P., 154.

5. Increase claims.

Section 4717, Revised Statutes, should not be applied to a claim for increase on account of a disability resulting from the pensioned disability. *Joseph B. Sykes* (Actg. Sec. Gorham), 3 P. D. (o. s.), 423.

6. Insane persons, claims by.

The proviso of section 6 of the act of July 27, 1868, reenacted as section 15 of the act of March 3, 1873, applies in all cases where the evidence is of the character to justify the presumption that the applicant for pension was prevented by insanity—for a reasonable time—within the term of limitation from making application for and prosecuting a claim for pension. In this case the claimant became insane four months prior to the termination of the period of limitation, and continued insane until nearly four months thereafter. *Richard J. Cunningham* (Asst. Sec. Cowen), 1 P. D. (o. s.), 153.

The exception as to minors and insane persons contained in section 4709, Revised Statutes, has no application to claims for pension under anterebellion laws, but the claims of such persons are governed by section 4713, Revised Statutes. *Minors of John Enders* (Actg. Sec. Cowen), 3 P. D. (o. s.), 32.

While the pension law exempts the claim of an insane person from any limitation as to date of filing, there is no authority of law for allowing a widow pension from the date of her insane husband's discharge if no claim was filed in his behalf during his lifetime. *Mary Uhrich* (Sec. Teller), 9 P. D. (o. s.), 354.

By the adjudication of this claim (on account of insanity alleged as of service origin), and the grant of a pension for the disability of insanity from the date of filing his application, it was necessarily adjudged and determined that his alleged insanity originated during his military service, existed in a pensionable degree at the date of his discharge, and has continued in a pensionable degree to the present time, and he is therefore included within the limitation act of March 3, 1879, and pension should date from his discharge. *Alban G. Stabler, guardian of Edward Campbell, alias Henry Mulholland, insane* (Asst. Sec. Hawkins), 2 P. D., 75.

Reconsidered and adhered to. *Ibid.*, 176.

Where insanity is alleged as the basis of a claim for pension, and it has been satisfactorily established that said insanity was incurred in line of military duty or resulted from the military service of the claimant, such claim must be adjudicated, so far as the question of arrears is concerned, without reference to the limitation as to date of filing claim prescribed in

6. Insane persons, claims by—Continued.

the act of March 3, 1879, and pension should commence from the date when a pensionable degree of disability first existed. Affirming *Edward Campbell*, alias *Henry Mulholland*, 2 P. D., 75, 176. *William Roberts* (Asst. Sec. Hawkins), 2 P. D., 350.

Citing the case of *Ellen Roberts*, guardian of *William Roberts* (2 P. D., 350), it is held that the terms of the proviso contained in section 2 of the act of March 3, 1879, excepting claims by or in behalf of insane persons from the limitation prescribed therein, have the effect of eliminating from said statute said limitation so far as all such claims are concerned; and, therefore when insanity was incurred in the line of duty or by reason of military service, said claim must be adjudicated, so far as the arrears of pension are concerned, without reference to the aforesaid limitation and as if no such limitation had been prescribed. *Richard Whiting*, insane (Asst. Sec. Bussey), 3 P. D., 105.

Claimant being shown by the testimony of his physician to have been, during the years 1879 and 1880, mentally deranged, with no lucid intervals and unable to attend to any business, he is exempt from the limitation prescribed in the act of March 3, 1879, as to commencement of pension, whether insanity is alleged as basis for pension or is a result of the disabilities alleged. *Alonzo Dyke* (Asst. Sec. Bussey), 4 P. D., 121.

The proviso of section 2 of the act of March 3, 1879, that the limitation prescribed in said act as to the date of filing applications for pension "shall not apply to claims by or in behalf of insane persons" is not applicable for purposes of arrears to persons whose insanity has been developed years subsequent to July 1, 1880, and whose application was not filed until, for instance, April 27, 1886. *John Young* (Asst. Sec. Bussey), 5 P. D., 117.

The limitation period prescribed in the act of March 3, 1879, is not applicable to a claim for arrears of pension filed "by or in behalf of insane persons" if the alleged insanity existed prior to or during said period of limitation. *John Vinson* (Asst. Sec. Bussey), 5 P. D., 166.

7. Invalid claims.

Where a soldier reenlisted two days after his discharge from his first service and did not file a claim for pension on account of an injury alleged to have been incurred in his first service until more than five years after said discharge, but less than five years after his second discharge, pension must commence from the date claim was completed. *John Hyland* (Actg. Sec. Cowen), 1 P. D. (o. s.), 21.

7. Invalid claims—Continued.

A service is not continuous which is broken by an interregnum of two days between the date of discharge from one and the date of enlistment in the other, and the bar of limitation would commence to run from the date of discharge from the earlier service, provided the disability was contracted in that service. *Ibid.*

Where claim was rejected in 1878 upon the ground that medical examination showed no disability existing from the cause alleged, such ground of rejection is not tenable after the repeal, by the act of January 25, 1879, of section 4709, Revised Statutes. *John R. Mills* (Sec. Schurz), 6 P. D. (o. s.), 38.

Where claim for pension on account of one disability was filed prior to July 1, 1880, and a supplemental application for another disability was filed subsequent to that date, the pension on account of the last-named disability, if allowed, will commence from the date of filing the application therefor. *John McKinney* (Sec. Kirkwood), 9 P. D. (o. s.), 39.

All invalid-pension laws in force at the time of the soldier's enlistment (April 20, 1862) were subject to the provisions of the second section of the act of May 15, 1820, which directed that "the right any person now has or may hereafter acquire to receive a pension by virtue of any law of the United States shall be construed to commence at the time of completing his testimony," and there is no title to pension from date of disability. *Michael L. Kiggins* (Sec. Kirkwood), 9 P. D. (o. s.), 83.

8. Minors' claims.

The period of limitation in minor's claims begins to run from the date of the appointment of the guardian. *William A. Rice* (Sec. Delano), 1 P. D. (o. s.), 3.

Limitation of minor's claims begins from the time the minor arrives at the age of 16 years, and a claim filed more than five years thereafter is not allowable under section 4709, Revised Statutes. *Minor of Hendrickus Nyland* (Sec. Chandler), 3 P. D. (o. s.), 256.

The exception contained in the proviso to the second section of the act of March 3, 1879, which declares that the limitation therein contained "shall not apply to claims by or in behalf of * * * children under 16 years of age" is descriptive of a class of claims wherein title has accrued by reason of minority at the date of the father's death, and does not limit the pensionable age and period during which said minors must apply. Such claims are excepted from all limitation and are not forfeited by neglect to apply during the period of pensionable

8. Minors' claims—Continued.

minority. *Minors of Thomas W. Baugher* (Asst. Sec. Reynolds), 7 P. D., 433.

The third section of the act of June 27, 1890, providing pension for minor children of a soldier, expressly limits the commencement of such pension to the date of filing the application under said act. This claimant having attained the age of 16 years previous to passage of said act, there is no period during which pension may be paid to her. *Hannah Hallowell* (Asst. Sec. Reynolds), 7 P. D., 561.

See case of *Minors of Eli Phipps*, general title MINORS.

9. Mothers' claims.

In claims of mothers the period of limitation begins to run July 14, 1862, date of the passage of the act conferring title upon mothers. Citing *George Frazier*, 8 L. B. P., 154. *Susan Parker* (Actg. Sec. Cowen), 8 L. B. P., 182.

Where a declaration for pension was left with the Commissioner of Patents prior to June 30, 1880, and was filed by him with the Commissioner of Pensions July 5, 1880, with the statement that by reason of sickness he had been prevented from filing it before, it was held the application was not exempt from the limitation provided in the second section of the act of March 3, 1879. *Jane E. Borden* (Sec. Kirkwood), 9 P. D. (o. s.), 1.

10. Motion to reconsider.

An attorney will be allowed ninety days in which to file a motion for reconsideration of a departmental decision affirming the action of the Bureau of Pensions in rejecting a claim allowing an unsatisfactory rate, or in denying an attorney the right to recognition or a fee. *Byron L. Streeter* (Asst. Sec. Reynolds), 7 P. D., 594.

11. Nonenlisted men.

The legal limitation applicable to the claim of a nonenlisted man is that in order to be valid the claim must have been prosecuted to a successful issue prior to July 4, 1874, and no person claiming on account of the death of such a soldier has any right superior to that which the soldier himself possessed under the law. *Adelheit Rheim* (Asst. Sec. Bussey), 3 P. D., 34.

12. Orphan brothers and sisters.

The claims of orphan brothers and sisters, under section 4707, Revised Statutes, do not come within the exception to the limitation as to commencement of pension in the proviso

12. Orphan brothers and sisters—Continued.

of the second section of the act of March 3, 1879, applicable to claims by and in behalf of insane persons and children under 16 years of age. *Minor sisters of Alexander Sutton* (Asst. Sec. Reynolds), 8 P. D., 137.

In claim of orphan brothers and sisters under the age of 16 years, filed under section 4707, Revised Statutes, subsequent to June 30, 1880, pensions can not commence prior to filing of such declaration, and such claims are barred when so filed after claimants arrive at the age of 16 years, there being no pensionable periods in such cases. *Ibid.*

13. Renewal of pension.

The fifteenth section of the act of March 3, 1879, relates to original claims for pension only, and not to claims for renewal of pension, payment of which has been suspended. *John Deering, jr.* (Sec. Delano), 1 P. D. (o. s.), 306.

Where pension was suspended under the first section of the act of March 3, 1865, a renewal thereof should commence from June 6, 1866, the date of the repeal of said act, irrespective of the date the claim for renewal was filed. *Ibid.*

After the expiration of a certificate granting pension for a specified time, an application under a subsequent act renewing such pension is a new and original application which is subject to the limitation as to the time of filing, and if it is not filed within the three years pension can commence only from the date of application. Citing and following *Agnes Wheeler. Anna Brasel* (Sec. Delano), 1 P. D. (o. s.), 411.

14. Widows' claims.

Where a widow fails to file application for pension within five years from the time her right accrued, her pension should commence from the date of filing application and not from the date of her husband's death. *Mary Rich* (Sec. Cox), 7 L. B. P., 284.

If a widow claimant does not apply until after five years from the date of her husband's death, pension should commence from the date of application, notwithstanding pension had been allowed to a child of the soldier by a former wife in ignorance of the fact that a widow survived. *Catherine Elberth* (Sec. Delano), 1 P. D. (o. s.), 257.

A widow who applies more than five years subsequent to her husband's death, and subsequent to her remarriage, is not pensionable. The case is governed by sections 14 and 15 of the act of March 3, 1873, and section 16 of said act has no

14. Widows claims—Continued.

application, as this claimant's remarriage was subsequent to July 27, 1868. *Minerva J. Simons, as widow of Isaac D. Linn* (Actg. Sec. Cowen), 2 P. D. (o. s.), 114.

Widows are not entitled to arrears if claim was not filed within five years from date of soldier's death, even if the exact date thereof was not ascertained until within five years prior to filing claim. *Laviso Bledsoe* (Sec. Chandler), 3 P. D. (o. s.), 303.

A widow who had remarried, and whose second husband died in 1877, is not pensionable as the widow of the first husband if she files no claim prior to July 1, 1880; but a minor child of the first husband is pensionable, no matter what be its age at the time of filing application. *Caroline Fritsche* (Actg. Sec. Bell), 8 P. D. (o. s.), 196.

Neither the act of July 1, 1890, as to execution of declarations before certain officers, nor the act of June 7, 1888, removing, as to widows, the limitation prescribed in the act of March 3, 1879, has any effect upon the claim of a widow who died prior to the date of the passage thereof. *Martha Worcester* (Asst. Sec. Bussey), 4 P. D., 127.

See also APPEALS; ARREARS; ATTORNEYS; COMMENCEMENT; MILITIA; MINORS; SUSPENSION.

LINE OF DUTY.**1. Generally.**

(a) *Examples.*

2. Absence from command as affecting line of duty.

(a) *Absent by permission—when in.*

(b) *Absent by permission—when not in.*

(c) *Absent acting under orders of his commander.*

(d) *Absent without permission.*

3. Deserter.

(a) *When not in line of duty.*

4. Acting under orders going to post of duty.**5. Foraging, when not in line of duty.****6. Furlough, while on, when in line of duty.**

(a) *To go home to vote.*

(b) *Sick furlough.*

(c) *Veteran furlough.*

7. In arrest, undergoing punishment, or serving sentence.

(a) *When not in line of duty.*

(b) *When in line of duty.*

(c) *Capture while in, and disability incurred in prison, is in line of duty.*

8. Injury incurred in attempting to escape from captivity.**9. Assault, injuries resulting from.**

(a) *When in line of duty.*

(b) *When not in line of duty.*

10. **Malpractice—surgical operation in hospital.**
11. **Negligence.**
 - (a) *When injury due to, received in line of duty.*
 - (b) *When not.*
12. **Personal altercation.**
 - (a) *When injuries received in, in line of duty.*
 - (b) *When not in line of duty.*
13. **Pistol wound.**
 - (a) *By a weapon not authorized by Army regulations.*
 - (1) *When not in line of duty.*
 - (2) *When in line of duty.*
 - (b) *When weapon carried by permission of commanding officer.*
 - (c) *When carried by teamster.*
14. **Scuffle, injuries incurred as a result of.**
 - (a) *When not in line of duty.*
 - (b) *When in line of duty.*
15. **Target practice, injuries received at, in line of duty.**
16. **Violation of orders, injuries received in, not in line of duty.**
17. **Death, when and when not due to line of duty.**
 - (a) *From explosion of shell caused by soldier, not in.*
 - (b) *From eating green apples is in.*
 - (c) *While bathing without express orders, not in.*
 - (d) *By suicide, when not in.*
 - (e) *From a cause unknown, presumed to be in.*

1. Generally.

Every officer in full commission, or soldier kept in pay, and not on furlough, must be considered in the line of his duty, although, at the moment, no particular or active employment is devolved upon him; but perhaps a voluntary absence, too long continued, on the part of an officer from his station might form an exception, so as to exclude the idea of his having been in the line of his duty during any accident or sickness palpably proceeding from causes while he was away. *Atty. Gen. Rush*, 1 Op., 181.

When the statute provides pension for disability or death occasioned by wounds or injuries received, casualty occurring, or disease contracted in the line of duty, it intends that the performance of duty must have relation or causation or consociation, mediate or immediate, to the wound, the casualty, the injury, or the disease which produces the disability or death. *Atty. Gen. Cushing*, 7 Op., 149 (2 P. D., 403).

To determine the right of pension, the question is not whether, when the cause of disability or death occurred, the party was on duty or not in active service, or on furlough or leave, in arrest or not, but whether, in any of the possible conditions of service, the cause of disability or death was appurtenant to, dependent upon, or connected with acts within or acts without the line of duty. *Ibid.*

1. Generally—Continued.

Upon the question of casualty the opinions of experts are evidence, but they do not constitute either exclusive or conclusive proof; and the question is to be judged by the real facts, like any other matter of evidence. *Ibid.*

Where the proofs as to the question of actor and subject are balanced, and it is impossible to determine by them whether the case be one of contemporaneity or of collocation only, or of cause and consequence, it is a reasonable inference of public policy to presume in favor of the service. *Ibid.*

It is according to public policy to presume in favor of the service where the line of duty enters potentially into the causes of disability or of death, although it be not certainly provable that it was the exclusive or predominant cause. *Ibid.*

Where an officer of the Navy dies of disease contracted while on the retired list, his widow is not pensionable. *Cornelia Lanman* (Sec. Delano), 2 P. D. (o. s.), 51.

Where soldier incurs disability while voluntarily, and without orders, engaged in shooting squirrels, or while asleep on his post, he is not in line of duty, as contemplated by the pension laws, and therefore not entitled to pension. *Jesse Corn* (Asst. Sec. Hawkins), 1 P. D., 196.

The line of performance of military duty must sustain to the casualty or the injury alleged the relation of cause, and the disability must be the legitimate sequence of such cause in the service. Citing and following the Commissioner's rulings in *David Smith*, No. 182216, March 25, 1885 (Pension Digest, 1885, 278), and *Joseph W. Stanley*, No. 468694, August 7, 1885 (Pension Digest, 1885, 278), and *W. H. Brokenshaw* (1 P. D., 194). *Alexander Gillespie* (Asst. Sec. Hawkins), 2 P. D., 16.

Question is not whether the soldier was in line of duty at the time he received his injury in the sense that he was not disobeying any military law, rule, or regulation, or guilty of any culpable negligence, but rather what is the quality or condition of the act which produced the injury of which complaint is made. *James Harding* (Asst. Sec. Hawkins), 2 P. D., 232.

Invalid pensions are granted for causes of disability due exclusively to line of duty in the service. *Daniel B. Kaufman* (Asst. Sec. Bussey), 3 P. D., 137.

Whether a soldier was acting under "military authority" is not the only test of his being within the line of duty; but the purpose for which the authority was given, as to being connected with his military duties or with his own private affairs, and also whether the authority was an order or a mere permit, and the character of military duty the command was performing

1. **Generally**—Continued.

at the time must be considered; although if that which he was only permitted to do was in line of good military discipline and calculated to promote the interests of the service, he would still be in line of duty. Affirming *W. P. Hargrave*, 16 P. D. (o. s.), 95. *William R. Johnson* (Asst. Sec. Bussey), 4 P. D., 167.

(a) **Examples.**

Where claimant, stationed in Boston, visiting the forts in the harbor in the performance of duty, subsequent to the rebellion, contracted a disease from which he died: *Held*, That under the provisions of section 4694, Revised Statutes, the disability was contracted in line of duty. *Martha G. Burnham* (Sec. Schurz), 5 P. D. (o. s.), 102.

Where soldier receives an injury caused by comrades jumping on him while he is climbing into his bunk, he was not injured in line of duty. *W. H. Brokenshaw* (Asst. Sec. Hawkins), 1 P. D., 194.

Overruled; s. c., 3 P. D., 11.

The question is not whether claimant was to blame for the conduct of his assailant (who had struck claimant with a stick of wood while he was in front of his tent untying his shoes preparatory to going to bed, as he alleged), but whether the blow struck by the latter was a necessary or even a reasonable incident of line of duty in this case. It is held it was not. Citing and following *William M. Ammerman*, 1 P. D., 5; *William Jones*, *ibid.*, 87. *Jesse M. Stilwell* (Asst. Sec. Hawkins), 2 P. D., 83.

Where a soldier having been detailed with others as a guard on the outside of a circus tent to protect it was permitted to go into the tent during the time he was relieved from active duty, and while within was injured by the seats giving way, he was not in line of duty. Citing and following *William M. Ammerman*, 1 P. D., 5. *Zenas Hamilton* (Asst. Sec. Hawkins), 2 P. D., 217.

Overruled: s. c., 3 P. D., 3.

Claimant having been injured in a pensionable degree by a fall of seats while witnessing a circus performance and it appearing that he was at the place as a member of a detail ordered to protect and guard said circus, and was within the tent at the time of the accident by the permission of his superior officer, the sergeant in charge of said detail, it is held that he was in the line of duty, for pensionable purposes. The accident by which claimant was injured was unavoidable on his part, with the happening of which he was in no way concerned. s. c. (Asst. Sec. Bussey), 3 P. D., 3.

1. Generally—Continued.**(a) Examples—Continued.**

Claimant having incurred injury of left side, caused by three soldiers, names unknown, jumping on him while he was climbing into his bunk, the Department holds that, inasmuch as the alleged injury happened to him without any fault or neglect on his part, claimant was in the line of duty. The alleged injury, though not a necessary result, was as to claimant an unavoidable incident of the service, he having been the helpless victim of an irresistible assault. *W. H. Brokenshaw* (Asst. Sec. Bussey), 3 P. D., 11.

Under section 4701, Revised Statutes, injuries incurred by a claimant while en route to his home from the place of disbandment of his organization are not pensionable. *John Vance* (Asst. Sec. Bussey), 4 P. D., 18.

Where a soldier was requested by his captain (who was sick in quarters) to go outside the camp and endeavor to procure some food suitable for him in his sickness, and soldier procured permission accordingly from the officer commanding the regiment, who directed him also to inspect while out the surrounding country with a view to procuring forage, and soldier, while acting in pursuance of these directions and permissions, was thrown from the mule he was riding and injured: *Held*, That he was injured in line of duty and is pensionable. Overruling former decision herein, *L. B.*, (Ua, 103. *Wesley C. Gerard* (Asst. Sec. Bussey), 4 P. D., 51.

The claimant was attacked by several soldiers, who were scuffling, who threw him down and injured him, he being an involuntary participant in the scuffle: *Held*, That injury was received in line of duty; under *W. H. Brokenshaw* (3 P. D., 11), and *Mary E. McNeil* (Ib., 26). *John Dean* (Asst. Sec. Bussey), 4 P. D., 392.

An injury received while the claimant was on his way to enlist in the Army is not pensionable, as he was not then enlisted in nor otherwise connected with the service. *William P. Payne* (Asst. Sec. Bussey), 6 P. D., 177.

Upon the report of the War Department that there are no orders directing soldiers to play base ball, but that the Department encourages athletic sports by enlisted men as promoting the efficiency of the men, and it has been the rule to regard injuries received by officers and enlisted men while engaged in such sports in camp or garrison as incurred in line of duty, it was held that the rejection on the ground alone that alleged disability was incurred while playing ball was error, and the case was remanded for further investigation as to the circum-

1. **Generally**—Continued.(a) **Examples**—Continued.

stances under which such disability was incurred, and further adjudication. *Henry Newman* (Asst. Sec. Reynolds), 8 P. D., —.

2. **Absence from command as affecting line of duty.**

It has been uniformly held that a soldier absent from his command of his own volition merely, and not acting under any military order, is not in line of duty; and a provision of law (section 4700, Revised Statutes), having been made for persons absent on account of sickness or under a furlough particularly designated, it must be understood that those not on public duty who may be absent from other causes and other circumstances are excluded and the principle involved is the same whether absence be for a long or a short time. *Benjamin W. Seaman* (Sec. Kirkwood), 9 P. D. (o. s.), 8.

(a) **Absent by permission—when in.**

Claimant while absent from his command on a written pass attending a party, within the lines of the Army, was captured and confined in Andersonville prison. It is held that a disability resulting from said imprisonment was contracted in the line of duty. *Charles Wilcox* (Asst. Sec. Hawkins), 1 P. D., 11.

The sailor having obtained from his commandant permission to visit on shore, with orders to return by a certain hour, was drowned while returning by reason of the boat capsizing in a squall: *Held*, That the sailor was in line of duty at the time of his death. *Florence N. Cowie* (Asst. Sec. Hawkins), 2 P. D., 58.

Where a soldier, sent on an errand, was returning to his command but, in the exercise of his discretion, went out of a direct course in order to obtain some refreshment at a hotel and accidentally fell into an open cellar by the way, it is held that his conduct involved no reprehensible deviation from the line of duty, and the injury is pensionable. *James A. Pearl* (Asst. Sec. Bussey), 3 P. D., 375.

Overruled: 7 P. D., 376.

Attendance, under permission of his superior officer, on religious service held outside of camp, there being no chaplain or religious services in camp, does not take a soldier out of line of duty for pensionable purposes. Citing *W. P. Hargrave*, 16 P. D. (o. s.), 95. *William R. Johnson* (Asst. Sec. Bussey), 4 P. D., 167.

(b) **Absent by permission—when not in.**

Widow is not entitled if soldier died while on leave to attend to private business. *Rosinda McCabe* (Sec. Harlan), 5 L. R. P., 273.

2. Absence from command as affecting line of duty—Continued.**(b) Absent by permission—when not in—Continued.**

Line of duty is not accepted when the soldier, on a verbal pass, for a purpose not connected with the service, was captured. *Robert Neuman* (Sec. Schurz), 6 P. D. (o. s.), 228.

Soldier not in line of duty when disability is contracted while in pursuit of pleasure or absent to attend to private business. *Benjamin F. Worrell* (Sec. Schurz), 6 P. D. (o. s.), 309.

An injury from the accidental discharge of a revolver while shooting fish when away from the company by permission of the captain is not incurred in line of duty. *Benjamin W. Seaman* (Sec. Kirkwood), 9 P. D. (o. s.), 8.

Where a soldier was accidentally drowned while returning from a supper outside of camp and across the Potomac River, which he attended by permission, his widow is not pensionable, as he was not, at the time of the accident which caused his death, engaged in any military duty, but was absent from his command for a purpose not in any manner connected with his duty as a soldier. *Elizabeth Bragunier* (Sec. Teller), 9 P. D. (o. s.), 250.

The soldier having frozen his feet in a furious snowstorm while absent over night from his company under permission to visit his relatives several miles from the line of march, it is held he is not pensionable, as the disability was not incurred while on a public duty, or sick leave, or veteran furlough with the organization to which he belonged. *John Pruitt* (Sec. Teller), 9 P. D. (o. s.), 295.

A soldier voluntarily absent from his company is out of the line of duty and exclusively responsible for whatever casualties befall him when not legitimately connected with the military service. *William H. Cummings* (Asst. Sec. Hawkins), 1 P. D., 351; *John Yant* (Asst. Sec. Hawkins), Id., 118.

A soldier having been killed by a locomotive engine while absent from camp on a pass, in pursuit of pleasure: *Held*, Not in line of duty. *Sarah Croft* (Asst. Sec. Hawkins), 1 P. D., 279.

A soldier is not in line of duty while absent beyond the lines of his command on leave or on pass in pursuit of pleasure or to attend to private business, and a disability contracted or accidental injury incurred while so absent is not pensionable. *Susan Stevenson* (Asst. Sec. Bussey), 3 P. D., 171.

A member of the United States Marine Band having been accidentally killed while engaged, by permission, on a private excursion for his own benefit, it is held that the casualty did

2. Absence from command as affecting line of duty—Continued.**(b) Absent by permission—when not in—Continued.**

not occur in the line of duty, and the claim of the widow for pension is therefore denied. *Anna S. Krause* (Asst. Sec. Bussey), 3 P. D., 243

A soldier having been permitted to go a short distance from camp to look after his bounty land claim was frozen to death while returning: *Held*, That as he was on private business he was not in line of duty for pensionable purposes. *Catherine Ott* (Asst. Sec. Bussey), 4 P. D., 47.

A soldier having been directed, after his enlistment, by the captain of his company to remain at his usual place of residence, about 1½ miles from the place of organization of the company, and report to him, said captain, each morning at his headquarters until the company's quota should be filled and it ordered to join the regiment, was injured while returning one morning to make such report by his horse becoming frightened and throwing him off on his head: *Held*, That he was in line of duty at time of incurrence of injury, although not actually with his company. Reversing former decision herein, L. B. (X.) 185. *John F. Heacock* (Asst. Sec. Bussey), 4 P. D., 160.

The claimant received permission to hunt for his own recreation, and while hunting was shot in the hand by an accidental discharge of his gun: *Held*, That he was not in the line of duty, and the decision of July 29, 1892, is overruled. *James E. Harrison* (Asst. Sec. Reynolds), 7 P. D., 97.

Claimant injured while "on liberty," by grasping a lighted firecracker from the hands of another man for the purpose of averting the danger from the latter: *Held*, That the injury was not incurred in the line of duty. "Line of duty" in the pension law means military duty, and not merely moral obligation. *Willard Spinney* (Asst. Sec. Reynolds), 7 P. D., 335.

Soldier shot by guerrillas while returning to his command after having been absent for several days on leave for the purpose of visiting his family and friends was not in line of duty. *Daniel W. Melvin* (Asst. Sec. Reynolds), 8 P. D., 89.

(c) Absent acting under orders of his commander.

A disease or an injury incurred by a soldier while away from his command passing between his own home and the military post, while acting in pursuance of the orders of his commanding officer, is held to be due to the line of duty, and therefore pensionable; and a mother's claim based upon such a cause of death is admissible. *Betsy M. Potter* (Asst. Sec. Bussey), 5 P. D., 48.

2. Absence from command as affecting line of duty—Continued.**(d) Absent without permission.**

Where soldier continues absent beyond original furlough, by reason of orders from his captain, who was also on furlough, he can only be considered in line of duty while he was engaged in the performance of the duty specially directed by his captain, and any injury or disease contracted otherwise is fatal to right of pension. *John Hays* (Sec. Schurz), 6 P. D. (o. s.), 411.

Where the soldier went, without permission, to a dance 2 miles from camp and was there arrested by the secret police and put in military prison, where he died from a cause originating while he was so confined, his widow is not pensionable, as the death cause did not originate in line of duty. *Elizabeth Hull* (Sec. Teller), 10 P. D. (o. s.), 150.

3. Deserter—when in line of duty.

Desertion of soldier who subsequently reenlists and contracts disability in line of duty, within the meaning of the pension law (said subsequent service not being tainted by desertion), should not deprive claimant of pension for disability incurred in last service in line of duty. *James H. Brush, alias Jesse L. Judd* (Sec. Schurz), 7 P. D. (o. s.), 73.

Applicant enlisted in a Massachusetts regiment in February, 1864, and deserted in April of the same year, and in May, 1864, while in desertion enlisted in a Connecticut regiment. He returned to his original command in March, 1865, under the President's proclamation, and was mustered out with his company in June, 1865. The War Department does not recognize the legality of his service in the Connecticut regiment. It is held that this service in the Connecticut regiment was pensionable service, as though his enlistment therein had been regular and lawful, and a disability incurred while serving therein was in the line of duty. *Alfred C. Taft* (Asst. Sec. Bussey), 5 P. D., 110.

Overruled: 7 P. D., 218.

(a) When not in line of duty.

Where a soldier deserted and was restored to duty without a trial, and while en route to his company contracted a disability, the claim should be rejected on the ground that during the period when the disability was contracted he was regarded as a deserter by the War Department, and not in line of duty. *Herman Lamprecht* (Actg. Sec. Bell), 4 P. D. (o. s.), 320.

Where soldier was captured while a deserter from his company and died in rebel prison hospital: *Held*, That his widow was not entitled to pension, upon the ground that the soldier did not die of disease contracted in the line of duty. *Caroline Gragg* (Sec. Schurz), 6 P. D. (o. s.), 410.

4. Acting under orders going to post of duty.

When an officer is ordered to go to a given point for duty and has set about his preparations to do so his transitus has begun. *Actg. Atty. Gen. Phillips*, 17 Op., 457.

An injury received while traveling from one post to another under orders from the War Department is construed to be on the march, and in line of duty, within the meaning of section 2 of the act of July 27, 1868, as held by the War Department. *Mrs. Adele Semple* (Actg. Sec. Cowen), 1 P. D. (o. s.), 66.

5. Foraging—when not in line of duty.

A soldier was not in line of duty while foraging, unless under orders, even if he had been granted leave to do so. *Eunice Wilson* (Actg. Sec. Cowen), 2 P. D. (o. s.), 24.

A soldier and a comrade while foraging by permission were ordered to return to camp by a patrol officer (a sergeant), who had on no insignia to distinguish him, and the soldier, doubting his authority, refused to obey, and having again been hailed by such patrol and ordered to stop or he would fire, having again refused, was shot and killed by the patrol. It not being alleged that such foraging was necessary in providing for himself or his command, it is *held*, such employment had no connection with the public service, but was for personal reasons and pleasure; that it was the soldier's duty to obey the order of the patrol, and his mother is not, therefore, pensionable. *Anna Updegraff* (Sec. Teller), 9 P. D. (o. s.), 308.

A soldier who leaves his command to forage is not pensionable on account of injury received while so foraging, unless such employment was by order, and not merely by permission, of his superior officer. Citing *Eunice Wilson*, 2 P. D. (o. s.), 24. *Frederick W. Smith* (Sec. Teller), 9 P. D. (o. s.), 315.

6. Furlough, while on, when in line of duty.

Soldier, while on furlough, is not in line of duty. *Matilda J. Munroe* (Sec. Usher), 5 L. B. P., 230.

Death from a disability contracted while on a furlough attending to private business is not pensionable; but death occurring while on furlough from a cause originating in line of duty in service prior to such furlough is pensionable. *Harriet A. Look* (Sec. Harlan), 5 L. B. P., 354.

Where a soldier, when on furlough, undertook, at the request of a recruiting officer, to be the bearer to headquarters of important papers, and was injured while performing such service, it is *held*, that "without touching the question whether a soldier on furlough is in line of duty or not, which does not

6. Furlough, while on, when in line of duty—Continued.

necessarily arise in this case," the soldier was in line of duty under these circumstances. *Richard D. Roberts* (Sec. Harlan), 6 L. B. P., 157.

Unless a furlough is given for a purpose expressly mentioned in section 4700, Revised Statutes, there is no authority of law for allowance of pension on account of disability incurred on furlough. Citing Thornton F. Rice (Sec. Delano), February 18, 1874; James P. Rader, *ibid.*, March 7, 1874; Jacob Rutroff, *ibid.*, April 15, 1876; Isabella C. Hoffman, Sec. Schurz, May 3, 1877; and the law can not be so construed as to cover other cases. Citing 6 Op., Atty. Gen. (Cushing), 684. *Thomas Griffith* (Sec. Kirkwood), 9 P. D. (o. s.), 180.

Soldier is not in line of duty when on individual furlough and widow is not entitled to pension. *Isabella C. Hoffman* (Sec. Schurz), 11 P. D. (o. s.), 172.

Soldier who had obtained a furlough to appear before a board for examination for a commission, on his attempt to return to his command after his examination, was thrown from a railroad train and injured. It is *held*, that said injury was received in line of duty. *James M. Hay* (Asst. Sec. Hawkins), 1 P. D., 111.

Where a soldier was captured by the enemy while on individual furlough, conveyed to a military prison, and, during his confinement as a prisoner of war contracted disease and died, it is *held* that, having been kept in duress by the enemy, he died in line of duty, and the claim of his widow for pension is valid. *Mary Ellason* (Asst. Sec. Bussey), 3 P. D., 100.

A soldier, while at home on furlough, was ordered, before the expiration of his leave, to return to his command, the balance of his furlough to be taken thereafter, which balance he was subsequently permitted to take, and while then returning to his home he was injured by a collision of trains: *Held*, That he was in line of duty when injured, because his presence at the time and place of injury was due to the original order terminating his furlough, etc. *Quincy J. Drake* (Asst. Sec. Bussey), 4 P. D., 53.

The soldier, while at home on furlough, was captured by the enemy, and while being held as prisoner of war contracted a disability from which he died while in prison: *Held*, That having been captured through no fault or neglect of his own, said disability was incurred in line of duty. Citing *Mary*, widow of James Ellason, 3 P. D., 100; Atty. Gen. Cushing's opinion, 2 P. D., 403. *Ellen Anderson* (Asst. Sec. Bussey), 6 P. D., 197.

5. Furlough, while on, when in line of duty—Continued.**(a) To go home to vote.**

A furlough granted to a soldier for the avowed purpose of enabling him to go home to vote does not keep him in the line of duty for pensionable purposes. *Isabella C. Hoffman* (Asst. Sec. Bussey), 5 P. D., 219.

(b) Sick furlough.

A soldier absent from the organization to which he belongs for any purpose not growing out of or connected with the public service, except on sick leave or sick furlough, is not in line of duty. *Lucinda Barrett* (Sec. Teller), 13 P. D. (o. s.), 5.

(c) Veteran furlough.

A soldier captured while at his home on veteran furlough is not considered in line of duty. *Elizabeth Rutroff* (Actg. Sec. Gorham), 3 P. D. (o. s.), 260.

Where soldier reenlisted and was granted a veteran furlough with other members of the company, and while on said furlough was captured, and in escaping from imprisonment incurred a disability: *Held*, That the case was not within the provisions of section 4700, Revised Statutes, not being on furlough with the organization to which he belonged. *Washington Maynor* (Sec. Schurz), 6 P. D. (o. s.), 13.

Accidental pistol wound received by a veteran volunteer while on veteran furlough can not be regarded as having been received in line of duty. *Paul Conlon* (Asst. Sec. Hawkins), 1 P. D., 106.

Overruled: 3 P. D., 396; reaffirmed, 7 P. D., 398.

An officer who is absent from his command while on veteran furlough is not in the line of duty for pensionable purposes although employed, under a verbal order of some superior officer, in looking after the men of his regiment and recruiting new men, with a view to increasing the number sufficiently to entitle him to be mustered with the rank of colonel. *Lawrence H. Rousseau* (Asst. Sec. Hawkins), 2 P. D., 6.

Reconsidered and adhered to. *Ibid.*, 151; 7 P. D., 398.

A veteran furlough with the organization to which the soldier belongs is distinguished from an individual furlough, and means a furlough given contemporaneously to the whole of said organization, embracing all its members, and it is operative from date, or from the moment of the disbandment of said organization at the place and time designated for rendezvous until the reassembling of the organization at said rendezvous upon the expiration of said furlough, and an enlisted

6. Furlough, while on, when in line of duty—Continued**(c) Veteran furlough—Continued.**

man having such veteran furlough is regarded, during the existence of it, as in the line of duty for pensionable purposes, the same as in the field or hospital. *William R. Osborn* (Asst. Sec. Bussey), 3 P. D., 396.

Overruled: 7 P. D., 398.

The language of section 4700, Revised Statutes, relating to soldiers "upon veteran furlough with the organization to which they belong," is held to mean such soldiers while with their commands when leaving and returning from veteran furlough, and not when separated and absent from such command while at their homes. The case of *William R. Osborn* (3 P. D., 396), is overruled, and the case of *Lawrence H. Rousseau* (2 P. D., pp. 6 and 151), cited and reaffirmed. *Mathew M. Curtis* (Asst. Sec. Reynolds), 7 P. D., 398.

7. In arrest, undergoing punishment, or serving sentence.**(a) When not in line of duty.**

Where soldier's disability was contracted while confined in a military prison on a charge of desertion: *Held*, That he was not in line of duty, as the imprisonment was in consequence of his violation of the law. *Minors of Joseph Reed* (Sec. Chandler), 4 P. D. (o. s.), 56.

Where claimant was placed under arrest and subsequently imprisoned for absence, without proper authority, beyond the period of furlough, disease incurred during the period of imprisonment was not contracted in line of duty. *Peter A. Linerger* (Sec. Schurz), 5 P. D. (o. s.), 285.

A soldier is not in line of duty, as construed in the administration of the pension law, when absent from his company under sentence of a provost court. *Michael Kearns* (Sec. Schurz), 6 P. D. (o. s.), 254.

A soldier can not be regarded as in line of duty while undergoing imprisonment in consequence of having violated military law. Citing *Joseph Reed* (Sec. Chandler), January 6, 1877. *Sarah J. Barber* (Sec. Teller), 9 P. D. (o. s.), 420.

A soldier while under arrest for an offense for which he was subsequently court-martialed and sentenced to dishonorable dismissal from the service is not in line of duty as to disability incurred during the period of his arrest. *Albert G. Fellows* (Actg. Sec. Joslyn), 15 P. D. (o. s.), 4.

Soldier's death from smallpox contracted while under arrest for desertion is not accepted as having been due to the service in the line of duty. *Minor of John Hendricks* (Asst. Sec. Hawkins), 1 P. D., 31.

7. In arrest, undergoing punishment, or serving sentence—Cont'd.**(a) When not in line of duty—Continued.**

An injury received while soldier was under arrest as a deserter is not considered to have been incurred in the line of duty. *Howard Miller* (Asst. Sec. Hawkins), 1 P. D., 50.

The fact a disability originated while the soldier was in confinement undergoing the sentence of a court-martial is, of itself, sufficient to locate the incurrence of such disability outside the line of duty. Citing and following minors of Joseph Reed, 4 P. D. (o. s.), 56; Michael Kearns, 6 P. D. (o. s.), 254; Sarah J. Barber, 9 P. D. (o. s.), 420. *Clarence Wallace* (Asst. Sec. Hawkins), 2 P. D., 41.

It is entirely inconsistent with the idea of the line of duty that the soldier was, at the time of incurrence of disease which caused his death, undergoing punishment as a convict for a departure from the line of duty, and it is immaterial, so far as the principle which governs this and all similar cases may be concerned, as to what was the character of the punishment inflicted by the court. Citing and following Minors of Joseph Reed, 4 P. D. (o. s.), 56; Michael Kearns, 6 P. D. (o. s.), 254; Sarah J. Barber, 9 P. D. (o. s.), 420; Clarence Wallace, 2 P. D., 41. *Mary Coburn* (Asst. Sec. Hawkins), 2 P. D., 80.

Overruled: s. c., 4 P. D., 62.

It is entirely inconsistent with the idea of line of duty that the soldier was undergoing punishment as a prisoner for a departure from the line of duty. Citing Joseph Reed, 4 P. D. (o. s.), 56; Michael Kearns, 6 P. D. (o. s.), 254; Sarah J. Barber, 9 P. D. (o. s.), 420; Clarence Wallace, 2 P. D., 41; Mary Coburn, *ibid.*, 80. *Margaret A. Knight* (Asst. Sec. Bussey), 4 P. D., 45.

Soldier having voluntarily, without orders or permission, left the ranks while on dress parade, for which offense he was punished by his superior officer by being placed on a "wooden horse," where he remained for one hour and forty-five minutes, during which period he contracted a severe cold, resulting in rheumatism, he was without the line of duty, for pensionable purposes, while in such insubordination and undergoing such punishment therefor. Citing General M. Brown, 3 P. D., 29. *Nerbain Baudet* (Asst. Sec. Bussey), 4 P. D., 177.

Disabilities incurred by a soldier while undergoing punishment for an offense against the rules of the Army are not ascribable to the line of duty for pensionable purposes. *Widow and Minors of Vandergriff* (Asst. Sec. Bussey), 5 P. D., 151.

A disease contracted as the result of confinement in a military prison was not contracted in the line of duty. *George East* (Asst. Sec. Bussey), 5 P. D., 243.

7. In arrest, undergoing punishment, or serving sentence—Cont'd.**(a) When not in line of duty—Continued.**

Where a claimant who was drafted for one year's service failed to appear and was arrested as a deserter, was tried, convicted, and sentenced to forfeit all pay and allowances then due or to become due to the date of the promulgation of the sentence, and thereafter to be assigned to some regiment in the field to serve one year from the date of joining the same, the legal effect of said sentence was to postpone the commencement of his pensionable military service until his assignment to some regiment in the field in accordance with said sentence; and where so much of said sentence as directed him to be assigned to some regiment in the field was never carried into effect, his prospective military service never commenced, and any disability incurred by claimant can not be considered as having been incurred in the line of duty. *Obediah P. Hankinson* (Asst. Sec. Reynolds), 7 P. D., 227.

(b) When in line of duty.

The sentence of a court-martial, on a trial for desertion, that the soldier lose all pay and allowances for the period of his absence from duty and serve the remaining four months of service of his organization and twelve months additional in another organization (sixteen months being the length of his desertion) is no bar to pension on account of disability originating in the line of duty in such additional service; this case being distinguished from the cases of Reed, Kearns, and Barber (anterior), in that this soldier was not "confined in a military prison," nor "absent from his command," nor "undergoing imprisonment," nor was the alleged disease contracted "while in confinement" under sentence of a court-martial, but he was performing ordinary regular military duty with his command, the same as the other members thereof, at the time he incurred the fatal disease. Citing Atty. Gen. Cushing's Opinion, 2 P. D., 403, overruling decision in same case, 2 P. D., 80. *Mary Coburn* (Asst. Sec. Bussey), 4 P. D., 62.

If a soldier is arrested and imprisoned on a charge, but on trial is adjudged not guilty, a disease incurred during his arrest and imprisonment is within the line of duty; but if adjudged guilty, such disease would be without the line of duty and nonpensionable. *Caroline Chollar* (Asst. Sec. Bussey), 4 P. D., 103.

(c) Capture while in, and disability incurred in prison, is in.

A soldier who was undergoing punishment for an alleged offense was captured by the enemy, being surrendered by his commanding officer and conveyed to a military prison wherein

7. In arrest, undergoing punishment, or serving sentence—Cont'd.

(c) **Capture while in, and disability incurred in prison, is in—Continued.**

he contracted pensionable disabilities which caused his death; and it is *held* that inasmuch as the chain that should connect his alleged offense with his death was broken by the capture and imprisonment, his death can not be fairly ascribed to causes outside the line of duty. The surrender of him by his commander to the enemy released him from imprisonment and restored him to the line of duty for pensionable purposes. *William H. Croup* (Asst. Sec. Bussey), 5 P. D., 89.

Capture by the enemy while in confinement under arrest places a soldier in line of duty as to disabilities incurred while a prisoner, whether at the time of capture he was with his command or not. Citing *William H. Croup*, 5 P. D., 89; opinion of Atty. Gen. Cushing, 7 Op., 149. *John W. Stamper* (Asst. Sec. Bussey), 6 P. D., 12.

8. Injury incurred in attempting to escape from captivity, is in.

A seaman, captured by the Tripolitans in 1803, on the frigate *Philadelphia*, having attempted, after fifteen months of captivity, to recover his liberty and join an American squadron then in harbor at Tripoli, was retaken and bastinadoed so severely as to be rendered incapable thereafter of performing a seaman's duty: *Held*, That he was in line of duty and pensionable under the act of April 23, 1800. *Atty. Gen. Wirt*, 1 Op., 461.

9. Assault, injuries resulting from.

(a) **When in line of duty.**

Colonel Vimont, while engaged in the performance of duty, was approached by an officer of inferior rank, who made improper demands of him concerning some remarks which had been made to another officer. Upon Colonel Vimont's declining to yield to those demands he was assaulted, and a quarrel ensued, during which he received injuries which caused his death: *Held*, That he was in line of duty, and his widow's claim for pension should be allowed. *Mary Jane Vimont* (Sec. Harlan), 5 L. B. P., 432.

Adhered to on reconsideration. *Ibid.*, 445.

The soldier while performing his assigned duty of currying and feeding horses was mistaken for another person by a comrade who, coming up behind him unobserved, struck him on the head with a billet of wood: *Held*, The assault being without provocation or justifiable cause, soldier was in line of duty for pensionable purposes when struck. Citing *William M. Ammerman*, 3 P. D., 1, overruling same case, 1 P. D., 5;

9. Assault, injuries resulting from—Continued.**(a) When in line of duty—Continued.**

William Jones, 3 P. D., 16, overruling same case, 1 P. D., 87.
William Williford (Asst. Sec. Bussey), 4 P. D., 31.

While soldier was watering horses, on which duty he had been detailed, he was assaulted, without any provocation on his part, and severely beaten by a comrade: *Held*, That he was in line of duty for pensionable purposes, overruling former decision, L. B. (Qa), 413, and citing William M. Ammerman, 3 P. D., 1; William H. Brokenshaw, *ibid.*, 11; Zenas Hamilton, *ibid.*, 3; William Jones, *ibid.*, 16. *Joseph Zerback* (Asst. Sec. Bussey), 4 P. D., 215.

(b) When not in line of duty.

The soldier having been, while asleep in his bunk, mistaken by a comrade for another person and struck by said comrade a severe blow with a saber, he was not in line of military duty. Citing and following William M. Ammerman, 1 P. D., 5; William Jones, *ibid.*, 78; W. H. Brokenshaw, *ibid.*, 194; William H. Pike, *ibid.*, 253; Carroll M. Wagoner, *ibid.*, 329; Alexander Gillespie, 2 P. D., 16; Jesse M. Stilwell, *ibid.*, 83; Mary A. Compton, *ibid.*, 129. *James Harding* (Asst. Sec. Hawkins), 2 P. D., 232.

Overruled in principle; 4 P. D., 31, 215.

10. Malpractice—surgical operation in hospital.

A soldier when put in hospital for medical treatment is in line of duty, and a surgical operation performed upon him by the surgeon of the hospital is a legitimate incident of the service. It is *held*, therefore, that the injurious results of a surgical operation in hospital are incurred in the line of duty and may be pensionable, the surgeon being responsible as the official agent of the Government. *Charles T. Caldwell* (Asst. Sec. Bussey), 3 P. D., 37.

11. Negligence.**(a) When injury due to, is regarded as received in line of duty.**

That which a soldier's superior officer recognizes as right for the soldier to do and permits is right enough to keep him in line of duty for pensionable purposes. *Henry A. Helmer* (Asst. Sec. Bussey), 3 P. D., 111.

Reconsidered and overruled: 7 P. D., 376.

(b) When injury due to, is not regarded as received in line of duty.

Where a soldier allowed his gun to remain loaded at a time forbidden by the regulations of the service, and was injured in consequence thereof, he is not pensionable on account of such injury. *David B. Champion* (Sec. Harlan), 5 L. B. P., 294.

11. **Negligence**—Continued.

(b) **When injury due to, is not regarded as received in line of duty**—Cont'd.

The rule of law that a party can not maintain an action for damages from the supposed wrongful act of another if his own carelessness or negligence essentially contributed to the result is clearly applicable to a pension claim. *Joseph R. Addis* (Sec. Harlan), 5 L. B. P., 400.

An injury resulting from an ordinary casualty or accident, not necessarily nor logically connected with the military service, or with the duties of the soldier, is not in the line of duty as giving title to pension. *James E. Friel* (Asst. Sec. Hawkins), 1 P. D., 329.

Contra: 3 P. D., 16 and 303; See also s. c., 6 P. D., 209.

Applying for and submitting to vaccination by a student of medicine, where qualified and recognized practitioners are accessible, is such carelessness as will take the case of disabilities resulting from such vaccination out of the line of duty for pensionable purposes, the soldier being otherwise within it. *Lawrence H. Rousseau* (Asst. Sec. Hawkins), 2 P. D., 6.

Where a soldier, having been ordered by his superior officer to take his horse to shoe at a town some distance away, went at "full ran," with a comrade with whom he was "fooling," and a hog ran out in the road so as to cause the horse to fall and soldier was thereby injured, he was not in line of duty. *George Solomon* (Asst. Sec. Hawkins), 2 P. D., 29.

To carry a loaded pistol with the hammer resting on the percussion cap and with the holster not buttoned, buckled, or otherwise properly fastened, is gross carelessness and contributory negligence if accident results. *George M. Beeler* (Asst. Sec. Hawkins), 2 P. D., 116.

The Department holds that when a person, disabled by injury received or disease contracted in the line of military duty, voluntarily places himself in a position particularly subject to risk and where such injury or disease increases the liability to accident, he must be regarded as assuming in a great measure the risk, so that accidents happening to him under such circumstances have such a remote and uncertain connection with the service, as a consequence, that neither disability nor death resulting from them comes within the pension law. *Mary E. Lewis* (Asst. Sec. Hawkins), 2 P. D., 334.

The negligence, on the part of a soldier, which is sufficient to take his case out of the line of duty, must be shown to have been of such a character as is recognized as gross negligence, which is defined (1 Chitty on Contracts, 662) to be "that want of care which every man of common sense, however inatten-

11. **Negligence**—Continued.

- (b) **When injury due to, is not regarded as received in line of duty**—Cont'd.
 tive, takes of his own property or person." Decision of June 23, 1887, L. B. (V), 379, is overruled. *Chalkley, alias T. C. Milbourn* (Asst. Sec. Hawkins), 2 P. D., 360.

Soldier riding a horse for personal pleasure, against the protest of his captain, who warned him of danger in riding the horse, with whose fractious habits he was already acquainted, can not be regarded as in any manner connected with line of duty. *Henry A. Helmer* (Asst. Sec. Hawkins), 2 P. D., 385.

Overruled: 3 P. D., 111, and reaffirmed, 7 P. D., 376.

An act of gross carelessness on part of claimant resulting in accidental injury, and causing disability for which pension is asked, is outside the line of duty. *John J. Freeland* (Asst. Sec. Bussey), 3 P. D., 32.

Where a soldier, while on guard duty, went into the guard-house to the fire, sat down in a chair by the stove with his gun held perpendicularly in front of him, the butt resting on the floor, and leaned back in the chair, tilting it so high that the hammer of the gun was brought under the lower front round of the chair, so that when he started to rise, bringing the chair down discharged the gun, the round catching on the hammer, and his finger, which was over the muzzle, was blown off, it was not only gross carelessness on his part in thus handling his weapon, but as he was acting in violation of his orders "to walk his beat when on post" (being on post at this time), he was without the line of duty, and said injury is not pensionable. *Elijah Pemberton* (Asst. Sec. Bussey), 4 P. D., 128.

Where a soldier, after entering a freight train with the members of his company, under command of an officer, for the purpose of returning to the front from a veteran furlough, jumped from the side door of the car while it was stopping for a few seconds, for the purpose of bidding good bye to a brother, and was injured in consequence: *Held*, That the injury received was not incurred in line of duty. This case does not come within the decision of William R. Osborn, 3 P. D., 396, as that decision holds merely that a soldier is to be considered as in line of duty generally while on veteran furlough and with his organization; adhering to former decision herein of October 4, 1887. *James E. Friel* (Asst. Sec. Bussey), 6 P. D., 209.

Where a soldier, after loading his revolver, attempted to place a cap on one of the nipples of the cylinder, and it being small and tight he endeavored to press it on with a screw-driver, which caused the cap to explode, discharging the pistol and inflicting a wound on his hand, it is held that said injury was

11. Negligence—Continued.

- (b) **When injury due to, is not regarded as received in line of duty—Cont'd.**
 due to his carelessness and was not received in line of duty, although he was carrying a pistol by permission of his superior officers in pursuance of his military duties. *Marcus E. Cartwright* (Asst. Sec. Bussey), 6 P. D., 232.

A soldier while in the performance of those duties which the law requires of him as a military duty is in the line of duty. The soldier being engaged in private business, and not in the performance of those things which the law required of him as a military duty, can not be considered in the line of duty. The case of *Mary E. McNeill*, 3 P. D., 26; *James A. Pearl*, *ibid.*, 375, and similar cases are overruled. *Henry A. Helmer* (Asst. Sec. Reynolds), 7 P. D., 376.

12. Personal altercation.

- (a) **When injuries received in, in line of duty.**

A disability occasioned by an assault like that complained of in the present case, where a sergeant in the Army while attempting to pass the guard, under the sanction of a written permit granted to him by his commanding officer, was assaulted, as claimed, without any provocation, by the officer of the guard, in such manner as permanently to disable him, may fairly be considered as coming within the terms of the law upon satisfactory proof (1) that the wounds were given without sufficient justification, and (2) that the permit was given and claimant was about passing the guard for some purpose growing out of or connected with the public service and not his private affairs. *Atty. Gen. Butler*, 20 Op., 589.

Where a soldier resisted an assault made with a saber by an unknown officer while the soldier was returning from fatigue duty, said officer having endeavored to take from him certain public property (an ax) with which he had been intrusted by his commander to perform a certain duty, the soldier (claimant) was not guilty of contributory negligence when, as a consequence of said resistance, he incurred the injuries alleged as a basis for pension; that he was in the line of duty, and that he is entitled to pension for the resulting disabilities. *Michael Bennett* (Asst. Sec. Bussey), 3 P. D., 8.

See case of *Vincent Pairar*, SUBTITLE 16.

A soldier who was in his proper place and who was injured by an assault which he did not provoke, but of which he was unavoidably the victim, is held to have been in line of duty for pensionable purposes. *Aaron Brewer* (Asst. Sec. Bussey), 5 P. D., 206.

12. Personal altercation—Continued.**(a) When injuries received in, in line of duty—Continued.**

Claimant having been assaulted by a comrade while at his post and in the line of duty is held to occupy a pensionable status for the injuries thereby incurred. *John H. Vance* (Asst. Sec. Bussey), 5 P. D., 274.

(b) When not in line of duty.

The fracture of claimant's skull by an enraged comrade, in retaliation for an alleged personal offense, can not be construed into a legitimate incident of or proper relation to the line of duty. *Alexander Gillespie* (Asst. Sec. Hawkins), 2 P. D., 16.

An injury incurred in a scuffle with a comrade is without the line of duty. Citing *William M. Ammerman* (1 P. D., 5); *William Jones* (Ib., 87); *Carroll M. Wagoner* (Ib., 338). *Mary A. Compton* (Asst. Sec. Hawkins), 2 P. D., 129.

Voluntary interference in a personal altercation between two soldiers, in the presence of their superior officers, puts the soldier so interfering outside the line of duty for pensionable purposes. *Baxter Hamilton* (Asst. Sec. Bussey), 3 P. D., 174.

While, as is stated in the appeal of *Jesse M. Stilwell* (2 P. D., 83). "the Government is bound to protect the soldier from unnecessary harm," yet it is not bound to protect him from the consequences of a quarrel entered into voluntarily on his part and having no connection with the performance by him of any military duty; the soldier in this case having been killed by a comrade whom he had repeatedly insulted by epithets of "coward," "loafer," etc.; this case being distinguished from the former in that while that soldier was, when attacked, in front of his own tent, attending strictly to his own business, and not rendering any provocation, this soldier was in the camp of another regiment, engaged in loud and violent denunciation of his comrade, whose official deeds or misdeeds were no concern of his, over whom he had no authority, and with whom the conditions of the service did not bring him into any necessary relation. *Mary A. McManus* (Asst. Sec. Bussey), 4 P. D., 346.

A soldier while trying to take the life of his superior officer by shooting was shot and wounded by such officer acting in self-defense: *Held*, That he was not in the line of duty, though said soldier was insane at the time. *John Mulcahy* (Asst. Sec. Bussey), 5 P. D., 201.

Claimant, who was shot by a civilian in consequence of remarks made by him relative to a quarrel then in progress between such civilian and another officer of claimant's regi-

12. Personal altercation—Continued.**(b) When not in line of duty—Continued.**

ment, is held not to have been in the line of duty, regardless of the question as to whether or not his remarks were sufficient provocation for the shooting. *Bowman H. Peterson* (Asst. Sec. Reynolds), 8 P. D., 56.

13. Pistol wound.**(a) By a weapon not authorized by Army regulations.****(1) When not in line of duty.**

The soldier—an infantry man—having been injured, as alleged, by the accidental discharge of a pistol in his pocket, is not pensionable on account of such injury, the Adjutant-General holding that infantry soldiers are not armed with pistols, and such injuries are entitled to no consideration by his office. *Alexander H. Davis* (Sec. Delano), 1 P. D. (o. s.), 486.

Infantry soldier is not in line of duty when wounded by the accidental discharge of his own pistol, as the pistol is not a part of the arms of an infantry man. *Daniel Compton* (Sec. Schurz), 4 P. D. (o. s.), 144.

An accidental wound by a pistol, when the pistol is not a part of the arms and accouterments issued by the Government, can not be considered as received in the line of duty. *Arthur Boyd* (Asst. Sec. Hawkins), 1 P. D., 105.

A soldier accidentally wounded by a weapon in his own hands, it not being authorized by regulations or order, is not in line of duty. *William H. Pike* (Asst. Sec. Hawkins), 1 P. D., 253.

It is presumed that the Government supplies its troops with all weapons needed for offense and defense against the enemy, and if they choose to carry other weapons they do so without authority, very often in contravention of authority, and always at their own risk, and injuries incurred thereby are outside the line of duty, and not pensionable. *Robert M. Dick* (Asst. Sec. Bussey), 3 P. D., 333.

Where an accident happens to a soldier in the use of some weapon not appropriate to the arm of service to which he belongs, and that is prohibited by some express order or by an army regulation, he can have no pensionable status for the consequent disability, but there is no such stringency in the rule as not to allow exceptional conditions. *Alfred P. Remick* (Asst. Sec. Bussey), 3 P. D., 131.

An accidental wound, incurred while handling a weapon that did not belong to the branch of service in which claimant was

13. Pistol wound—Continued.

(a) By a weapon not authorized by Army regulations—Continued.

enlisted, furnishes, in the absence of proof to the contrary, conclusive ground for the presumption of contributory negligence, and is not pensionable, because not attributable to the line of duty. *Samuel Emmett* (Asst. Sec. Bussey), 3 P. D., 281.

Claimant, an infantry soldier, purchased a pistol, and while exhibiting it in camp it was accidentally discharged in the hands of a comrade, the contents entering claimant's breast: *Held*, That such a firearm not being a part of the arms and accouterments prescribed by the Government for an infantry soldier, he carried it at his own risk, and if he received a wound it can not be held to have been received in the line of duty. *Elias W. Reidy* (Asst. Sec. Reynolds), 7 P. D., 132.

(2) When in line of duty.

The claimant, an infantry soldier, on arriving at the regimental recruiting camp found the army was expected to advance soon. They were without arms, and he, while cleaning his revolver, his own private property and the only weapon he then had, accidentally discharged it, wounding himself: *Held*, That though at the time of injury he was not acting under any order nor in violation of any order, he was in the place of duty, the act in which he was engaged had a proper connection with his duty as a soldier, and, in the absence of evidence to the contrary, it must be presumed that he exercised ordinary care. He was, therefore, in line of duty, and is pensionable. *William D. Kinnerson* (Sec. Teller), 9 P. D. (o. s.), 299.

If the weapon, not an arm of the service to which soldier belonged, was carried in contravention of or without authority from his superior officer, an injury received in consequence is without the line of duty, and if such a weapon is carried, not in violation of an order, and carrying it is not inconsistent with good military discipline, an injury received in consequence thereof may be in line of duty, dependent upon all the circumstances of the case. Modifying *Robert M. Dick*, 3 P. D., 33. *William F. Wescott* (Asst. Sec. Bussey), 6 P. D., 226.

(b) When weapon carried by permission of commanding officer.

An infantry soldier injured by a pistol, knife, or sword, or any other arm than musket or bayonet, which he was carrying by permission of his superior officer, is not pensionable on account of such injury; but might be if he was carrying it by order of such officer, if the officer was competent to so order. Opinion in *William H. Pike*, 1 P. D., 253, adhered to. *George M. Beeler* (Asst. Sec. Hawkins), 2 P. D., 116.

13. Pistol wound—Continued.**(b) When weapon carried by permission of commanding officer—Continued.**

Where it appears that at the time the soldier incurred an accidental pistol-shot wound he was carrying said weapon by the express permission and even suggestion of his captain for foraging purposes, the said accidental wounding, if without any apparent fault on soldier's part, will be held as due to the line of duty. *Lewis Summers* (Asst. Sec. Bussey), 3 P. D., 372.

(c) When carried by a teamster.

A pistol-shot wound, caused by accidental discharge of the weapon while the soldier was engaged in cleaning the same for use in performance of special service as a teamster in the quartermaster's department, being unattended by contributory negligence, is held to have been in the line of duty for pensionable purposes. *Joab Truce* (Asst. Sec. Bussey), 5 P. D., 14.

14. Scuffle, injuries incurred as a result of.**(a) When not in line of duty.**

Soldier, while very much intoxicated, was wrestling with one of his comrades, and a pistol was dropped by one of them which exploded, causing wound: *Held*, That disability was not contracted in the line of duty. *George Stowers* (Sec. Delano), 1 P. D. (o. s.), 352.

Soldier is not in line of duty while engaged in a voluntary scuffle, and claim for pension on account of a disability so contracted should be rejected. *William J. McPherson* (Sec. Schurz), 5 P. D. (o. s.), 47.

When injury was received in consequence of charging upon a fellow-soldier, in accordance with a "playful custom" which appears to have existed in the regiment, with a view to unhorsing him, it is held that the disability was not incurred in the line of duty. *Thompson W. McKee* (Actg. Sec. Bell), 6 P. D. (o. s.), 83.

An injury received while voluntarily scuffling with a comrade was not incurred in line of duty, but if the soldier was forced into the contest in self-defense or was tripped up unawares the case would be different. *John Brown* (Sec. Schurz), 8 P. D. (o. s.), 60.

Where soldier, while leaning upon a banister, was pushed over and injured by two scuffling comrades, said injured soldier not being at the time in the performance of any military duty or service, he was not in the line of duty when so injured. *William Jones* (Asst. Sec. Hawkins), 1 P. D., 87.

Contra: s. c., 3 P. D., 16.

14. **Scuffle, injuries incurred as a result of**—Continued.(a) **When not in line of duty**—Continued.

The cause of disability giving title to pension must in some manner pertain to, and have a natural and logical connection with, the military service and to line of duty in said service, but a soldier injured by some of his comrades who were at the time engaged in play is not considered as having been in line of duty, such play having no connection with the service. *William M. Ammerman* (Asst. Sec. Hawkins), 1 P. D., 5; *Carroll M. Wagoner* (Asst. Sec. Hawkins), *ibid.*, 338.

Overruled: 3 P. D., 1.

Claimant was standing witnessing some comrades jumping, when one of the jumpers accidentally let his weight slip from his hand and it struck claimant on the head over the right eye, injuring him severely. It was *held* that the soldier was not in line of duty under the rule announced in *William M. Ammerman*, 1, P. D., 5; *William Jones*, *ibid.*, 87; *W. H. Brokenshaw*, *ibid.*, 194; *James E. Friel*, *ibid.*, 329; *Carroll M. Wagoner*, *ibid.*, 338; *Alexander Gillespie*, 2 P. D., 16; *Jesse M. Stilwell*, *ibid.*, 83; *James Harding*, *ibid.*, 232. *Stephen G. Case* (Asst. Sec. Hawkins), 2 P. D., 345.

A soldier, while walking with a comrade within the camp limits, got to scuffling with him, each in play striking at the other and trying to trip the other up, which the comrade finally did to soldier; the soldier fell, with the comrade on top of him, breaking his leg: *Held*, That soldier was not in line of duty; distinguishing this case from *Alexander McNiel*, 3 P. D., 26, in that the soldiers in that case were wrestling as a matter of athletic sport and exercise, with the consent and approbation of their commanding officers, and conducted themselves in a manner not unseemly or unsoldier like or calculated to disturb or transgress military discipline, while in this case none of these circumstances existed, the soldiers being engaged in a foolish, senseless, dangerous scuffle—disorderly, unseemly, and unsoldierlike, and in subversion of good order and military discipline. *William Welsh* (Asst. Sec. Bussey), 4 P. D., 279.

An injury received while a soldier was scuffling in a hospital in which he was employed as cook was not incurred in line of duty, although the certificate of disability upon which he was discharged states that such injury was received in the line of duty. *Mary A. Wilson* (Asst. Sec. Bussey), 6 P. D., 222.

(b) **When in line of duty.**

A soldier in his proper place in camp who was pushed over another soldier and injured without fault or neglect on his part

14. Scuffle, injuries incurred as a result of—Continued.**(b) When in line of duty—Continued.**

was in the line of duty. Overruling s. c., 1 P. D., 5. *William M. Ammerman* (Asst. Sec. Bussey), 3 P. D., 1.

Where soldier, a member of the guard, while standing against a rail or balustrade eating his rations at dinner time, immediately in front of his quarters, was pushed or thrown backward over said balustrade by two comrades, who engaged in a scuffle to which the soldier did not contribute, and the latter thereby incurred injuries: *Held*, That the injuries were received in the line of duty for pensionable purposes. *William Jones* (Asst. Sec. Bussey), 3 P. D., 16.

A soldier having received in the service, during a friendly wrestle with a comrade, the injuries which subsequently caused his death: *Held*, That, there being neither malice nor bad blood about the affair, the injuries being purely accidental and not contrary to the rules and regulations of the service, the said injuries were incurred in the line of duty for pensionable purposes. *Mary E. McNeil* (Asst. Sec. Bussey), 3 P. D., 6. Overruled: 7 P. D., 376.

The Government can not be relieved of responsibility for the injuries incurred by the soldier in line of duty while it is faithfully pursued; and where a soldier in the service incurred an injury as the accidental result of a scuffle, in which he was not a participant and to which he did not contribute, he is held to have been in the line of duty for pensionable purposes. *Jacob Bowersmith* (Asst. Sec. Bussey), 3 P. D., 303.

15. Target practice, injuries received at, in line of duty.

An injury received without contributory negligence upon the part of the soldier while he is engaged in target practice, under authority, express or implied, of his superior officer, is incurred in line of duty; and it is immaterial whether the instrument then used under such authority be a pistol, a musket, or any other arm pertaining to the service. *William F. Wescott* (Asst. Sec. Bussey), 6 P. D., 226.

16. Violation of orders, injuries received in, not in line of duty.

The line of duty in the service is averse to acts that are forbidden by properly authorized superior officers and that are in violation of military discipline; nor should a claim for pension be granted for disability incurred as the result of a claimant's own willful wrongdoing. *General M. Brown* (Asst. Sec. Bussey), 3 P. D., 29; *Mary Taffe* (Asst. Sec. Bussey), *ibid.*, 157.

A soldier is not deemed in line of duty, within the meaning of the pension laws, when engaged in the violation of law, or of

16. Violation of orders, injuries received in, not in line of duty—
Continued.

any rule, order, or regulation of the military service. *Vincent Paiar* (Asst. Sec. Reynolds), 8 P. D., 312.

When soldier was shot by his superior officer for refusing to obey his order, he can not be pensioned for disability due to said gunshot wound, for the reason that said wound was not incurred in line of duty. *Ibid.*

17. Death, when and when not due to line of duty.

(a) **From explosion of a shell caused by soldier—not in.**

Where soldier was killed in camp by the explosion of a shell from which he had removed the fire plug, thus causing the explosion: *Held*, That he was not in line of duty. *Mary O'Donald* (Sec. Delano), 8 L. B. P., 432.

(b) **From eating green apples is in.**

Death in service from eating green apples is in line of duty. *Anastatia Caile* (Actg. Sec. Cowen), 1 P. D. (o. s.), 42.

(c) **While bathing without express orders not in.**

The widow of a soldier who was accidentally drowned while bathing, is not pensionable unless he was acting under express military orders. *Ann Kelley* (Actg. Sec. Gorham), 6 L. B. P., 11; *Priscilla W. Murray* (Actg. Sec. Gorham), 4 P. D. (o. s.), 122.

(d) **By suicide, when not in.**

It being alleged, but not shown, that this soldier was insane at the time he committed suicide while in service, by jumping overboard at Fort Monroe, on return from imprisonment, it is held that the rejection of his widow's claim was proper. *Catherine Spangy* (Sec. Delano), 1 P. D. (o. s.), 133.

Where the claim of a widow is based upon allegation that the soldier was insane when he committed suicide, while in service, it is not sufficient to show that the soldier was insane, but it must be made to appear that his insanity resulted from causes to which he was subjected in the line of duty. *Margaret A. Berry* (Actg. Sec. Bell), 7 P. D. (o. s.), 164.

(e) **From a cause unknown, presumed to be in.**

The soldier being found one morning in the river near camp nearly frozen, from which exposure he died four days thereafter, he being shown to have been a man of steady habits and that there was no opportunity for obtaining intoxicating liquors in camp, it is held a minor claimant should be given the benefit of the doubt, and the soldier held to have been in line of duty. *Minors of Jackson A. Brewer* (Sec. Delano), 2 P. D. (o. s.), 430.

See also EVIDENCE; FURLOUGH; ORIGIN; PRACTICE (Vicious Habits); SERVICE.

LOYALTY.

See ALLEGIANCE; BOUNTY LAND; DISLOYALTY.

MAGISTRATES.**Illiteracy of.**

Illiteracy of a magistrate does not impair the force of his certificate as to the character of witnesses. *Z. Holland* (Sec. C. B. Smith), 5 L. B. P., 119.

MANDAMUS.

Where a decision by the Commissioner of Pensions adverse to the applicant has been overruled on a question of law by the Secretary of the Interior, a refusal by the Commissioner to carry out the decision of his superior entitles the pensioner to a rule on the Commissioner to show cause why mandamus should not be issued to compel him. *United States ex. rel. Dunlap v. Black*, 128 U. S., 40.

See also COMMISSIONER OF PENSIONS.

MARINE CORPS.**Title to pension.**

The joint resolution of Congress passed August 10, 1848, placed the officers, noncommissioned officers, privates, and musicians of the Marine Corps who served with the Army in the war with Mexico on an equal footing with the officers, noncommissioned officers, privates, and musicians of the Army with whom they served. The phrase "other remuneration," employed in said resolution, must be understood to refer to pensions. It was the intention of Congress to remove any distinction in respect to pensions between men in the same relative position who might be disabled by the loss of their limbs while fighting side by side in the same service. *James Orr* (Atty. Gen. Toucey), 5 Op., 59.

See also BOUNTY LAND; LINE OF DUTY; SERVICE.

MARTHA NICHOLS.

See WAR VESSELS.

MARRIAGE AND DIVORCE.

1. Age of consent.
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33. Void because of a prior marriage.
34. Void because of infancy.
35. Void because of insanity.
36. Not void for want of license.
37. Abandonment equivalent to divorce.
38. Decree of nullity, effect of.

1. Age of consent.

It being contended that claimant at the time of her marriage was under the age of fourteen years, it is held that there is no proof as to her age; but as the cohabitation following such marriage continued until after she had attained the age of fourteen the fact that she was under the age of fourteen at the time of her marriage would not affect its validity. *Emily J. Griswold* (Actg. Sec. Gorham), 3 P. D. (o. s.), 492.

In Michigan a marriage is void without divorce or other legal process if either of the parties was under the age of legal consent and if the parties separate during such marriage and do not cohabit together afterwards. *Lorinda M. Kellogg* (Asst. Sec. Reynolds), 7 P. D., 31.

2. Definition of

An accepted definition of marriage under the common law is the entering of a man and woman, by mutual consent, into permanent and absolute association and union to be the joint head of a family or of a household. *Harriet Ford, colored* (Asst. Sec. Bussey), 5 P. D., 239.

3. Marriage determined by the *lex loci*

Where the law of the State or place where the parties reside expressly states the requirements of a legal marriage and the conditions which shall attend the relation of husband and wife, the rights of marriage and the fact of lawful widowhood for pensionable purposes depend upon a faithful compliance with said law, regardless of the rule that would be otherwise applicable under the common law. *Eliza W. Carter* (Asst. Sec. Bussey), 5 P. D., 148.

Unless there be between parties a mutual consent to marry, either by present agreement or by promise, followed by cohabitation, the fact that they lived and cohabited together, even in a State where the law recognized the validity of actual contract between them without any formal religious or other ceremony, would not constitute a marriage between them. Such cohabitation would not create a pensionable status for the alleged widow. *Harriet Ford, colored* (Asst. Sec. Bussey), 5 P. D., 239.

In determining an application the laws of the State or country where the alleged marriage took place should be resorted to as the rule of decision upon its validity, and the legitimacy of the child should be subject to the same rule. The common law has never been adopted by the United States, and these questions, therefore, are governed solely by the laws of the particular State where the parties are domiciled, subject only to the limitations contained in the Federal Constitution. *Mehitable J. Pinkham* (Actg. Sec. Otto), 6 L. B. P., 280.

Where the widow of a colored soldier applies under section 3 of the act of June 27, 1890, section 4705, Revised Statutes, has no application, and the widow must prove her marriage by the *lex loci*. *Lettie Hawkins, colored* (Asst. Sec. Reynolds), 8 P. D., 22.

4. When an impediment to marriage exists.

As this soldier had a wife living at the time he assumed to marry this claimant, and such former wife is still living and no claim is made that she has ever been divorced from said marriage, neither this claimant nor her children by the soldier are pensionable. *Sarah J. Cowell* (Sec. Chandler), 3 P. D. (o. s.), 147.

4. When an impediment to marriage exists—Continued.

Where the validity of a second marriage is questioned upon the presumption that the first wife is living, but there exists a reasonable and un rebutted probability of the death of said first wife, the Department applies the rule that "if by the law of the place where parties dwell a mere present mutual consent constitutes marriage, then, if they are living in a connection which both desire should be matrimonial, but an impediment renders the marriage void, valid marriage will instantly arise on the removal of the impediment while the mutual wish for marriage continues. It is immaterial to this result whether the impediment was known to the parties or not; nor is this a mere rule of evidence; the law makes them husband and wife." (1 Bishop on Marriage and Divorce, sec. 505.) *Amy P. Sheets* (Asst. Sec. Bussey), 3 P. D., 293.

Overruled: 7 P. D., 468.

The holding is adhered to that "if by the law of the place where the parties dwell present mutual consent constitutes valid marriage, then, if they are living together in a connection which both desire to be matrimonial, but an impediment renders the marriage void, valid marriage will instantly arise on the removal of the impediment while the mutual wish for marriage continues. It is immaterial to this result whether the impediment was known to the parties or not; nor is this a mere rule of evidence; the law makes them husband and wife." *Nancy J. Dorlas* (Asst. Sec. Bussey), 5 P. D., 230.

Overruled: 7 P. D., 468.

A claimant for widow's pension, by reason of having been the second wife of a soldier who claimed to have been divorced from his first wife, must show that her marriage to the soldier was a lawful one by proving that the soldier was in fact divorced from the first wife or that the second marriage, if not originally legal in form, became lawful by reason of continuous cohabitation subsequent to the removal, by either death or divorce, of any impediment that may have been due to the first marriage. *Mercy Lewis* (Asst. Sec. Bussey), 5 P. D., 293.

Where at the time of the marriage an impediment exists to the marriage of either party such marriage is illicit, and no presumption in favor of marriage subsequent to the removal of such impediment can arise from the parties' long-continued cohabitation and recognition of each other as husband and wife, unless the proof shows a change in the character of their relations subsequent to such removal of impediment. *Elizabeth Schmidlin* (Asst. Sec. Bussey), 6 P. D., 200.

As it appears that the soldier was married previous to his

4. When an impediment to marriage exists—Continued.

marriage to the claimant, proof of a prima facie valid marriage between soldier and claimant is not sufficient in the absence of the proof of the death or divorce of the first wife. *Mary A. Reynolds* (Asst. Sec. Reynolds), 8 P. D., 287.

The question as to whether an impediment existed to a valid marriage, arising in a pension claim of a widow, is a question of fact, and the Pension Bureau in determining the same is not bound by the decision of any other tribunal. *Catherine Maher, widow of John Tyge* (Asst. Sec. Reynolds), 8 P. D., —.

5. Evidence of, in war of 1812 claims.

Proof of marriage prior to the treaty of peace of February 17, 1815, is essential in claims under act of February 14, 1871. *Mary C. Hopkins* (Sec. Schurz), 6 P. D. (o. s.), 23.

6. Evidence of invalidity of.

Other than record evidence is admissible in proof of invalidity of marriage. *Susan H. Summers* (Asst. Sec. Bussey), 4 P. D., 376.

7. Verdict of jury, when not admissible to prove.

The verdict of a jury acquitting an attorney or agent charged with presenting and prosecuting a fictitious, false, and fraudulent claim for pension to be paid appellant in a case wherein the validity of her marriage was in question is not admissible to show that she was lawfully married to the soldier on account of whose death she claims pension. *Mary F. Barker* (Asst. Sec. Reynolds), 8 P. D., 48.

8. Burden of proof.

Claimant's marriage to soldier in 1877 is shown by record evidence, and she lived with him as a wife from the time the ceremony was performed until his death, in 1884, and bore him four children, who survived soldier. Applicant was never married prior to her marriage with soldier, and no evidence appears in the case tending to show that soldier was ever previously married, but all the witnesses who have testified in the claim state that they never heard it intimated that he had been previously married, but prior to this marriage he represented himself to be a single man, and they believed this, and have no reason to believe otherwise: *Held*, That a legal marriage between claimant and soldier is proved. *Mary C. Buckley* (Asst. Sec. Reynolds), 8 P. D., 195.

Claimant being unable to prove whether soldier had been previously married, and there being no evidence that such was a fact, but all the evidence rather showing that there was no

8. Burden of proof—Continued.

such prior marriage the burden of securing the necessary evidence is upon the Government, as held in the case of the widow of Ami Kimball, No. 586051, decided April 4, 1896, and the action of rejection is reversed in order that the claim may be specially investigated. *America Hooker* (Asst. Sec. Reynolds), 8 P. D., 210.

9. Presumptions of, from cohabitation and repute.

Under the appropriation act of May 7, 1846, which requires such proof of marriage in pension cases as would be sufficient to establish marriage "in civil personal actions in a court of justice," general reputation and cohabitation are sufficient *prima facie*, but may be rebutted, and when the date is material the burden of proving it is on the claimant. *Atty. Gen. Mason*, 4 Op., 497.

There being no record or other direct evidence of remarriage, yet the admissions of the widow of soldier that she lived with second party as his wife for a period of twenty years, being known by his name and recognized as his wife by all who knew her, including her own children by the soldier: *Held*, That she is estopped from drawing pension as widow of soldier. *Charles A. Banks* (Sec. Schurz), 7 P. D. (o. s.), 83.

Where claimant, more than seven years after the departure of her first husband, remarried and lived with her second husband until his death, twenty years thereafter, it is held that the validity of the second marriage should be presumed, claimant having made affidavit to the effect that her first husband had died during the cholera epidemic prior to her remarriage; she having lived with and cohabited with her second husband for many years without any question as to the validity of their assumed relations as husband and wife; and there being nothing in the case to raise a suspicion of its validity. *Sarah Gorby* (Asst. Sec. Bussey), 4 P. D., 298.

Soldier and claimant were married in Ohio in 1873, he then having a wife living and undivorced, and claimant also a husband then living and undivorced. Soldier and his former wife were divorced in 1874. Claimant's former husband abandoned her in 1867 and she heard no more of him until sometime after 1875. She heard of his death in that year. Soldier and claimant lived and cohabited together as husband and wife and were recognized as such from the date of their marriage until his death in 1887: *Held*, That under the facts shown a legal marriage between the soldier and claimant since the removal of the impediments will be presumed. Citing and distinguishing *Thankful Morse*, 1 P. D., 56. *Elizabeth Felber* (Asst. Sec. Bussey) 4 P. D., 329.

10. In Arkansas.

See SUBTITLE 33.

11. In the District of Columbia.

On reconsideration of decision of November 7, 1887 (1 P. D., 324), it is held that evidence, in this case, of cohabitation, recognition, and reputation shows a common-law marriage, which is held to be valid under the laws in force in the District of Columbia, where the parties resided, as said laws, although prescribing formalities in solemnization, do not expressly prohibit such marriages or declare them invalid. Citing *Meister v. Moore*, 96 U. S., 76; *Maryland v. Baldwin*, 112 U. S., 490, overruling the former decision. *Fanny Curtis, colored* (Asst. Sec. Hawkins), 2 P. D., 159.

See also SUBTITLE 29.

12. In Illinois.

Under the laws of Illinois a marriage contracted without observing the statute requirements, if made according to the common law, is valid. (*Post v. Post*, 70 Ill., 484; *Hebblethwaite v. Hepworth*, 98 Ill., 126.) *Mary Von Horn* (Sec. Teller), 9 P. D. (o. s.), 281.

The claimant and soldier were legally married in 1846 in Illinois, in which State she obtained a divorce April 10, 1867. Before the decree was obtained they jointly deeded the homestead to a third party, who, the day after the divorce was obtained, deeded the same to the claimant, this being under a stipulation in order to secure the homestead to her in her own right. It was also stipulated that the soldier should occupy the homestead with the applicant and their children as long as he lived; that he was to eat at the same table, assist in the support of the family, and the family should do his washing. This agreement was faithfully carried out, he continuing to live in said home, but sleeping in a room away from the homestead, until the day of his death, and was buried from the house. It also appeared that they were recognized by their friends, neighbors, and acquaintances as husband and wife up to the time of his death: *Held*, That on above facts no marriage was contracted subsequent to said divorce, and the claimant is not the soldier's widow. *Ibid*.

Claimant married the soldier about eighteen months after her first husband had abandoned her, and from whom she was not divorced: *Held*, That under the laws of Illinois, in which State she resided, the marriage to the soldier was void, and no marriage could be presumed from their subsequent cohabitation as husband and wife, as such cohabitation was illicit in its inception, and the soldier never knew of her former marriage. Quoting in full *Cartwright et al. v. McGown*, 121 Ill., 388. *Mary B. McCollum* (Asst. Sec. Bussey), 6 P. D., 93.

13. In Indiana.

Claimant was married to the soldier in 1859 by a ceremony, and they lived together in the relation of husband and wife in the State of Indiana from that time until soldier's death in 1892, and twelve children were the issue of said marriage. At the date of this marriage the soldier had a prior wife living, who procured a divorce from him in the State of Illinois in 1863, all of which facts were unknown to claimant prior to soldier's death. It is held that under the laws of the State of Indiana while the marriage in 1859 was void, a valid common-law marriage arose between claimant and soldier after the granting of a decree of divorce in 1863, the acts of the parties after the impediment was removed raising the presumption of mutual consent, which the supreme court of Indiana holds is the essential factor of a perfect common-law marriage in that State. (*Teter v. Teter*, 101 Ind., 129; *Boulden v. McIntire*, 119 Ind., 574; *Castor v. Davis et al.*, 126 Ind., 46.) *Louisa J. Doan* (Asst. Sec. Reynolds), 8 P. D., —.

14. In Kentucky.

The law of marriage, for pensionable purposes, of such colored and Indian soldiers as enlisted prior to March 3, 1873, is found in section 4705, Revised Statutes. Slave marriages could only be ratified and legalized after emancipation in the State of Kentucky by compliance with the act of February 14, 1866, of that State, and appellant and the man with whom she had lived as wife during slavery in Kentucky having failed to ratify and legalize their slave marriage after emancipation by complying with the requirements of said act, such slave marriage was void under the laws of Kentucky, and created no legal impediment to her subsequent marriage to the soldier of that State. This holding is not in conflict with the decision of the Department in case of *Maria Myers*, 4 P. D., 398. *Nannie Roach, colored* (Asst. Sec. Reynolds), 7 P. D., 80.

15. In Maryland.

The law of Maryland requires a formal ceremony, performed by a person authorized by law to solemnize marriages, to constitute a legal marriage. *George and Albert Koler* (Asst. Sec. Bussey), 5 P. D., 99.

The laws of Maryland do not recognize marriages under common-law rules. (*Dennison v. Dennison*, 35 Md., 361.) *Lettie Hawkins, colored* (Asst. Sec. Reynolds), 8 P. D., 22.

16. In Michigan.

See SUBTITLES 1, 34, 35.

17. In Mississippi.

A common-law marriage is valid in Mississippi. *Patsey Clark, colored* (Asst. Sec. Bussey), 4 P. D., 134.

The constitution of Mississippi, which provides "that all persons who have not been married, but are living together and cohabiting as man and wife, shall be taken and held, for all purposes in law, as married," was not intended to force a matrimonial status upon those who had no desire for matrimony. *Ann Buie, colored* (Asst. Sec. Reynolds), 7 P. D., 122.

18. Colored persons in Mississippi.

Marriages of slaves were not recognized by any law of the State of Mississippi (*Rundle v. Pegram*, 49 Miss., 751), nor by the general law of African slavery (*Hall v. U. S.*, 2 Otto, 27); but marriages of slaves who cohabited after emancipation became valid by such cohabitation (*Girard v. Lewis*, 6 Martin, La., 559). As this claimant and the soldier did not cohabit subsequent to January 1, 1863, the date of the President's proclamation abolishing slavery in Mississippi, she can not be regarded as his widow. *Philis Porterfield* (Sec. Kirkwood), 9 P. D. (o. s.), 10.

See also SUBTITLE 29.

19. In Nebraska.

See SUBTITLE 29.

20. In New York.

In New York, both during the Revolutionary war and to the present time, a contract of marriage entered into by parties capable of contracting, in the presence of competent witnesses, is as valid, to constitute a marriage in law, as if made in facie ecclesiæ or in the presence of a civil magistrate. *Atty. Gen. Butler*, 3 Op., 287.

Claimant married the soldier in 1865 or 1866, in the State of New York, and lived with him as his wife in that State to the time of his death in 1893. One Sarah Butler, who is now the wife of one Benham, testified that she was married to said soldier ten years before the war by a Baptist minister, but that just prior to her marriage to Benham in 1864 she procured a divorce from said soldier through an attorney in New York City, but that she could not find the decree. No record of such divorce has been found: *Held*, That as the evidence of previous marriage rests on the same testimony as the evidence of divorce, under the circumstances, and the decisions of the courts of New York and the Supreme Court of the United States, claimant's marriage to soldier may, as the case now

20. In New York—Continued.

stands, be held valid; but as the case appears to be susceptible of further proof, the same is reopened for further special examination. *Lodiska C. Hyer* (Asst. Sec. Reynolds), 8 P. D., 298.

See also SUBTITLE 31.

21. In North Carolina.

See SUBTITLE 29.

22. In Ohio.

Common-law marriages are valid in the State of Ohio. *Elizabeth Felber* (Asst. Sec. Bussey), 4 P. D., 329.

23. In Pennsylvania.

Cohabitation and public acknowledgment as husband and wife is deemed sufficient, under the laws of Pennsylvania, to constitute a legal marriage. It is held that claimant's cohabitation as wife of one Shields, and their open acknowledgment on joining church, of each other as husband and wife, and subsequent recognition as such, bring the case within the statute, showing marriage. *Martha J. Griffin* (Sec. Chandler), 3 P. D. (o. s.), 82.

In Pennsylvania marriage is a civil contract to the validity of which the consent of the parties, able to contract, is all that is required; but when two persons marry while one of them has a husband or wife living and not divorced, such marriage is void. And their continued cohabitation after the removal of the impediment to their legal marriage, without proof of a subsequent actual marriage, is not sufficient to raise the presumption of a marriage after the removal of such impediment. *Sarah C. Hayden* (Asst. Sec. Reynolds), 8 P. D., —.

See also SUBTITLE 38.

24. In Tennessee.

The soldier, on account of whose death appellant claims pension, having had ample opportunity to know, or to ascertain upon slight inquiry, that his first wife was living when he married appellant is presumed to have known such fact; and his said marriage to appellant was not valid under section 3293 of the code of Tennessee. *Mary F. Barker* (Asst. Sec. Reynolds), 8 P. D., 48.

25. In Utah.

A marriage at common law is valid in the Territory of Utah. *Harriet Strong* (Asst. Sec. Bussey), 6 P. D., 90.

26. In Virginia.

A marriage contracted in Virginia under a license issued in the District of Columbia is illegal and void. *Elizabeth Munroe, alias Ward, alias Green* (Sec. Chandler), 3 P. D. (o. s.), 122.

NOTE.—The above was subsequently overruled by the same Secretary, who stated the true rule to be that marriages valid at common law but not solemnized in accordance with the requirements of the statute will be sustained as valid unless they are positively declared void by the statute. Citing *Blackburn v. Crawford*, 3 Wallace, 175, and *Gatewood v. Tunk*, 3 Bibb., 246. (See s. c., *ibid.*, 282.)

27. Of slaves in Virginia.

The claimant's mother cohabited with the soldier (who was a slave) as his wife until 1857 (bearing him several children), when he was sold and they were separated until 1864, when he again found her and she returned to and lived with him for a short time, but soon returned to another man with whom she had begun cohabiting in 1863, and with whom she has continued to live since, and to whom she was formally married under a license in 1872. The soldier died July 1, 1864: *Held*, That claimant's mother can not be regarded, under section 4570, Revised Statutes, as the soldier's widow; but the act of February 22 (27), 1866, of the legislature of Virginia, in which State claimant's mother and the man to whom she was afterwards formally married, as stated, lived, operated to make valid her marriage with the latter, and to legitimize her children by the soldier, who are pensionable accordingly. *Minor Children of John Parker* (Sec. Kirkwood), 9 P. D. (o. s.), 4.

The act of the assembly of Virginia, passed February 27, 1866, recognized the relation of marriage between such colored persons as were, at the time of its passage, cohabiting with each other, under an agreement or understanding to live together as husband and wife. Such an agreement need not be in express terms. It may be implied from the acts and declarations of the parties. *Edith Faulk, alleged widow* (Asst. Sec. Reynolds), 8 P. D., 213.

Under the law as above stated, and on the facts elicited by special examination to which this claimant was a party, the claimant is shown to have been the wife of Stephen Watkins; and since the act of February 27, 1866, was retrospective in its nature, and merely sanctioned marriage agreements previously entered into and subsisting at the time of the act, an implied agreement between this claimant and Stephen Watkins being in effective operation at the time of the claimant's death, there can be no period of time during which she had a pensionable status as the widow of Lambert Faulk, the soldier through whom she claims. *Ibid.*

28. In Indian nations.

The Wyandotte tribe of Indians in 1882 were a distinct political community and as such possessed the power of self-government and the consequent right to determine the social condition and domestic status of one of its members, he being within the jurisdiction of and a domiciled subject of said Wyandotte Nation. (*Worcester v. State of Georgia*, 6 Peters, 515; *Strader v. Graham*, 10 How., 82.) A decree of divorce granted by the Wyandotte council, being an act of the nation as a sovereignty, exercised through its proper channels, and not prohibited by the Constitution and treaties of the United States, its validity is not affected by the fact that said decree was granted without notice to defendant. (*Maynard v. Hill*, 125 U. S., 190; *Pennoyer v. Neff*, 95 U. S., 714.) Such decree destroyed the marriage relation existing between libellant and libelee, and is effectual to necessitate a holding that claimant is not the legal widow of soldier. *Cassandra F. Clark* (Asst. Sec. Reynolds), 8 P. D., 235.

29. Of colored and Indian soldiers.

The widow of a colored soldier is entitled to pension whether their marriage was prior to, during, or subsequent to service, other conditions to title being shown. *Sarah Butler* (Sec. Delano), 2 P. D. (o. s.), 165.

The widow of a colored soldier must show cohabitation with him up to date of his enlistment. *Minors of Samuel Statesman* (Sec. Delano), 2 P. D. (o. s.), 345.

Section 724, Revised Statutes, can not be considered to apply in a case where the parties did not live together as man and wife on or prior to the 25th day of July, 1866, but marriages of colored persons in the District of Columbia contracted after that date must, in order to be legal, have been celebrated in accordance with the laws of the District. *Elizabeth Munroe, alias Ward, alias Green* (Sec. Chandler), 3 P. D. (o. s.), 122.

Section 4705, Revised Statutes, was obviously intended for the class of persons whose condition during and prior to the late rebellion was such that legal marriages among them were not allowed, and can not properly be held to apply to a case like the present, where the parties are not shown to have lived together as man and wife prior to the year 1871, or six years after the suppression of said rebellion. *Ibid.*

Where it appeared that the claimant and the soldier, while slaves in the State of Mississippi, had lived and cohabited together as husband and wife, but had separated long before his enlistment, and his conduct was such after said separation

29. Of colored and Indian soldiers—Continued.

as to negative any presumption that he deemed the said ceremony of marriage obligatory, it is held that the claimant could not be recognized under section 4705, Revised Statutes, as his widow. *Philis Porterfield* (Sec. Kirkwood), 9 P. D. (o. s.), 10.

All enactments of Congress relating to the marriage of colored soldiers contemplate only negroes who were slaves, or who resided in States wherein their marriage may not have been legally solemnized. They neither refer to nor include negro soldiers or their families who were free, or who resided in States where they could have solemnized legal marriage. *Fanny Curtis* (Asst. Sec. Hawkins), 1 P. D., 324.

Section 4705, Revised Statutes, applies only to relations existing while colored persons were in the anomalous condition growing out of slavery, and not to their relations subsequently as citizens of the United States. But such persons might contract a valid and legal marriage in accordance with the law of their place of residence at any time after enlistment. *Ibid.* (Asst. Sec. Hawkins), 2 P. D., 159.

Section 4705, Revised Statutes, must be construed strictly, and a minor claimant must show his parents lived together as man and wife, recognizing each other as such, up to the date of the father's enlistment; and it is immaterial whether a separation prior to his enlistment was voluntary or involuntary. *Children of Peter Williams* (Asst. Sec. Hawkins), 2 P. D., 383.

Under section 4705, Revised Statutes, the woman who at the date of the enlistment or of the death of soldier (a slave) was living with him as his wife, the two habitually recognizing each other as husband and wife, and as such recognized by others, is entitled to pension as his widow, even though, previous to such cohabitation, the soldier (being a slave) had contracted a so-called marriage with another woman then living. (See case of *Fanny Curtis* (colored), 2 P. D., 159.) *Henrietta Breckinridge, colored* (Asst. Sec. Bussey), 3 P. D., 5.

It is held that the evidence shows that claimant and soldier (slaves) were married by a ceremony deemed by them obligatory and habitually recognized each other as husband and wife up to date of his death, and that she is entitled, therefore, to a widow's pension under section 4705, Revised Statutes. *Channa Route, colored* (Asst. Sec. Bussey), 3 P. D., 254.

Under section 4705, Revised Statutes, a claimant, as widow, must show not only that she was joined in marriage with the soldier by some ceremony deemed by them obligatory, but also that they habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived together as

29. Of colored and Indian soldiers—Continued.

such up to the date of soldier's enlistment. But a claimant for minor's pension need show only that its parents were joined in marriage by some ceremony deemed by them obligatory, and need not show that its parents lived together up to the date of enlistment. *Minors of Joseph Crain, colored* (Asst. Sec. Bussey), 4 P. D., 358.

Overruled: 7 P. D., 545.

As claimant's first husband had separated from his first wife, to whom he was married while they were slaves, and had not lived with his first wife again prior to his marriage to claimant, such separation was equivalent to dissolution of the first marriage and rendered him competent to contract marriage with claimant; and as his and claimant's marriage was also contracted while they were slaves, and they continued after their emancipation to cohabit as husband and wife, and were so recognized for a number of years, such marriage to claimant was legal and valid. His subsequent desertion of claimant and return to his first slave wife did not invalidate his marriage to claimant. Claimant's subsequent marriage to the soldier in this case was, therefore, invalid under the statutes of Nebraska, cited. *Maria Myers, colored* (Asst. Sec. Bussey), 4 P. D., 398.

Claimant and soldier, both being slaves, were married according to slave customs in December, 1854, and lived together as husband and wife until the fall of 1862, when they were separated by claimant being removed by her master, and claimant and soldier never met again. Soldier enlisted in 1864 and died in the service in 1866: *Held*, That claimant is the widow of soldier under section 4705, Revised Statutes, and that the children born of said union are legitimate and have a pensionable status. *Emily Latham* (Asst. Sec. Bussey), 5 P. D., 170.

Overruled: 7 P. D., 545.

A child born as the issue of a slave marriage, solemnized by a ceremony deemed by the parents obligatory and under which they lived and cohabited and recognized each other as husband and wife, is legitimate within the meaning of section 4705, Revised Statutes, although its parents were subsequently separated, prior to the father's enlistment in the Army, by reason of being sold to different masters under slave customs and did not live together thereafter, and although he, while in service, was married to another woman with whom he lived until his death and who was pensioned as his widow. Citing *Emily Latham*, 5 P. D., 170; *John Pendleton*, *ibid.*, 217. *Minor of Sanford Boswell* (Asst. Sec. Bussey), 6 P. D., 235.

29. Of colored and Indian soldiers—Continued.

Section 4705, Revised Statutes, exempts from requirements of State law the proof therein required to establish legal marriage so far as colored and Indian claims are concerned. The requirements of section 4705, Revised Statutes, must therefore be specifically set forth in each case in order to establish title. Slaves could divorce themselves with or, perhaps, without the consent of their master and without judicial intervention. *Juda Hughes, colored*, (Asst. Sec. Reynolds), 7 P. D., 107.

Proof that soldier and appellant (Indians) were married in North Carolina in 1850, according to the customs of the Cherokee Indians, is insufficient to establish a marriage for pensionable purposes. Under Article XII of the treaty of New Echola, concluded December 29, 1835, such individuals and families who refused to remove with their tribe west of the Mississippi, but desired to become citizens of the States where they resided, ceased to be a part of the Cherokee Nation and henceforth became citizens of and were subject to the laws of the State in which they resided. And by the laws of North Carolina, where appellant and soldier resided, there is but one law of marriage (marriages according to Indian customs not being recognized), and appellant's marriage must be proved to be a legal marriage according to the law of that State, in accordance with the act of August 7, 1882. Cases cited: *Eastern Band of Cherokee Indians v. The United States and Cherokee Nation*, 117 U. S., 299, and *State v. Ta cha ma tah*, 84 N. C., 614. *Polly Ann Chulaska Sinla, Indian* (Asst. Sec. Reynolds), 7 P. D., 353.

Section 4705, Revised Statutes, has no application to claims for pension under the third section of the act of June 27, 1890, as the right does not depend upon the incurrence of wounds, injuries, or disease incurred in the service. *Ibid.*

Claimant, a slave, having been joined in marriage to the soldier (also a slave, who died in the service) by a ceremony deemed by them obligatory, and having habitually recognized each other as husband and wife and being so recognized by their neighbors, and having lived together up to soldier's enlistment, notwithstanding soldier's owner opposed such marriage, comes within the provisions of section 4705, Revised Statutes, and is pensionable. *Mary J. Smith, colored* (Asst. Sec. Reynolds), 7 P. D., 403.

To entitle minor children "of colored and Indian soldiers and sailors" to pension it must be proved that their parents were joined in marriage by some ceremony deemed by them obligatory or habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived

29. Of colored and Indian soldiers—Continued.

together as such up to the date of enlistment, when such soldier or sailor died in the service or, if otherwise, to date of death. The children of a colored soldier by a woman who was not living with him as his wife at the date of his enlistment or death are not pensionable under section 4705, Revised Statutes. Cases of Joseph Crain, 4 P. D., 358; Emily Latham, 5 P. D., 170, and John Pendleton, 5 P. D., 217, overruled. *Minors of William Toller, colored* (Asst. Sec. Reynolds), 7 P. D., 545.

Title to pension in the widow of a colored soldier is dependent upon section 4705, Revised Statutes, if the soldier died by reason of wounds, injuries, casualties, or disease received or contracted in the military or naval service of the United States. *Lettie Hawkins, colored* (Asst. Sec. Reynolds), 8 P. D., 22.

The mother of the claimants is shown not to have lived with the soldier as his wife up to the date of his enlistment, soldier having died in the service, and her marriage can not be recognized under section 4705, Revised Statutes, nor can the claimants be considered as his children for pensionable purposes. (William Toller, 7 P. D., 545). *Minors of George Barker, alias Garrett* (Asst. Sec. Reynolds), 8 P. D., 284.

Where the bona fide moral matrimonial intent is lacking between a male and female slave, their cohabitation can not be made the foundation of a legal marital status by force of law after emancipation. *Annie Hughes* (Asst. Sec. Reynolds), 8 P. D., —.

Claimant was married to the soldier before the war, while they were both slaves, and lived with him until he entered the service. He did not resume matrimonial relations with her after discharge, but in 1869 was married to one Rachel Williams, with whom he lived until his death in 1891: *Held*, That claimant is not his widow. *Patsey Washington* (Asst. Sec. Reynolds), 8 P. D., —.

30. Illegal, may not be legalized by legislation.

An illegal marriage can not be legitimized by legislation subsequent to the death of one of the parties. *Emily L. Herron* (Actg. Sec. Cowen), 1 P. D. (o. s.), 44.

31. Remarriage.

Claimant's remarriage in 1844, her first husband being still alive and not divorced, having been absent from claimant (who believed him dead) for eight years, was valid under the laws of New York, and she has no title to pension as widow of her first husband, the soldier. *Susan Williams* (Sec. Schurz), 6 P. D. (o. s.), 189.

31. Remarriage—Continued.

Where a valid common-law marriage, under the *lex loci*, existed prior to the ceremonial marriage with the same woman, which took place subsequent to the passage of the act of June 27, 1890, such ceremonial marriage neither added to nor detracted from the validity of the common-law marriage, and claimant has title under the latter to pension under said act. *Widow of John A. Koch*. (Asst. Sec. Reynolds), 8 P. D. —.

32. Remarriage—retrospective laws.

Neither the act of March 9, 1878, nor section 4708, Revised Statutes, is retrospective in operation as to a widow's remarriage. *Ellen Morrison, as widow of Daniel Milliken* (Asst. Sec. Hawkins), 2 P. D., 100.

Reaffirmed, *ibid.*, 272; overruled: 3 P. D., 283.

33. Void because of a prior marriage.

A widow's remarriage to a man who then had an undivorced wife living is no bar to her pension, such marriage being declared void by the laws of the State wherein solemnized. *Mary L. Moore* (Sec. Chandler), 3 P. D. (o. s.), 72.

A remarriage while the first marriage had not been dissolved, claimant's husband not having been shown to have died, is void. *Thankful Morse* (Asst. Sec. Hawkins), 1 P. D., 56.

A marriage while one has a husband or wife living is void; and the fact that there was good ground for obtaining a divorce from the first marriage does not validate the second, no divorce having in fact been obtained prior to the second marriage. *Mary Ann Piles* (Asst. Sec. Bussey), 4 P. D., 262.

Where a soldier had a wife living at the time he married claimant, and after the death of said wife married a third woman, with whom he lived until his death, it is held that the marriage to the claimant is void, and she is not his widow. *Distinguishing Felber* (4 P. D., 329). *Augusta Watkins* (Asst. Sec. Bussey), 6 P. D., 63.

A marriage by a party while he or she has a former wife or husband living and undivorced is void. *Lucinda Brown* (Asst. Sec. Bussey), 6 P. D., 153.

The claimant in this case having had a lawful husband living from whom she had not been divorced at the time she assumed to marry the soldier on account of whose death she claims pension, it is held said marriage to the soldier was void, and she is not pensionable as his widow. The case of *Mary A. Garman* (3 P. D., 179) overruled. *Lavanchia L. Salisbury* (Asst. Sec. Reynolds), 7 P. D., 247.

33. Void because of a prior marriage—Continued.

Where one of the parties to a marriage is ignorant of the fact that the other party had, at the time of such marriage, a legal husband or wife living from whom he or she had not been divorced, and dies in ignorance of such fact, it becomes a legal impossibility for the surviving party to such second marriage, who alone had knowledge of the legal impediment, to prove a legal marriage, as in such cases no consent can be proved after the removal of the legal impediment. *Ellen A. Palmer* (Asst. Sec. Reynolds), 7 P. D., 363.

Applicant was married to the soldier in 1832, and lived with him as his wife until May 1856, when he deserted her and in June of the same year married another woman, neither he nor appellant ever having been divorced. Appellant married one A in 1861, and soldier died in 1862. Appellant left said A about the year 1864, having been advised that said marriage was void: *Held*, That applicant's marriage to A was void, and her cohabitation with him illicit and meretricious from the beginning, and that its continuance after the death of the soldier under the circumstances of this case is not evidence sufficient to raise a presumption of legal marriage subsequent to the removal of the impediment to her legal marriage to A, and that she is, therefore, the legal widow of the soldier. *Eunice D. German* (Asst. Sec. Reynolds), 7 P. D., 503.

Claimant and soldier having been married by a ceremony when both were aware that soldier had a wife living, from whom he had not been divorced, their cohabitation was illicit from its inception, and in the absence of proof of a change to a matrimonial relation after soldier's wife procured a divorce from him, it will be presumed that the original illicit relation has continued, and she will not be held to be the legal widow of the soldier. *Rachel Harvey* (Asst. Sec. Reynolds), 7 P. D., 600.

The mother's claim was rejected on the ground that the soldier left a widow surviving him, which rejection was affirmed December 19, 1892. On a motion to reconsider said decision it is *held* that although the soldier's wife, Samantha, married Ira Stevens while soldier was living and undivorced, and continued to cohabit with said Stevens until several years after the soldier's death, the said marriage was illicit and void ab initio, and did not become good upon the removal of the impediment; that upon such removal a marriage does not instantly arise by mere operation of law independent of the consent of the parties, but the relation subsisting between the parties being illicit in its inception, the illicit relation is presumed to continue until a change in the relation is shown

33. Void because of a prior marriage—Continued.

affirmatively. *Ann Eliza Server, mother* (Asst. Sec. Reynolds), 7 P. D., 468.

Where matrimonial cohabitation commences between parties under a contract of marriage which is void, a subsequent actual marriage may be presumed to have been entered into after the removal of the disability from acts of recognition by the parties, continued matrimonial cohabitation, and general repute showing consent. Cases of *Nancy J. Dorlas* and *Amy P. Sheets*, and all others in conflict herewith, are overruled, and cases of *Mary B. McCollum* and *Elizabeth Schmidlin*, approved. *Ibid.*

At the date of the passage of an act of the Arkansas general assembly, February 6, 1867, providing that negroes and mulattoes who were then cohabiting as husband and wife, and recognizing that relation, should be deemed lawfully married, claimant was living in said State with one *George Washington* in the relation of husband and wife. Her marriage to soldier in 1871, while *Washington* was alive and undivorced from him, was, therefore, void, and she is not his lawful widow. *Mary A. Holmes* (Asst. Sec. Reynolds), 8 P. D., —.

34. Void because of infancy.

In Michigan a marriage is void if either party was under the age of consent. *Lorinda M. Kellogg* (Asst. Sec. Reynolds), 7 P. D., 31.

35. Void because of insanity.

Soldier having been insane at the time of his alleged marriage to appellant, she has no pensionable status, as, under the laws of Michigan, where said marriage was celebrated, "all marriages solemnized when either of the parties was insane or an idiot are absolutely void without any decree of divorce or legal process." *Mary J. Storms* (Asst. Sec. Reynolds), 7 P. D., 571.

36. Not void for want of license.

Noncompliance with the law as to publication of bans, or issuance of license, or return for record of the certificate of marriage, subjects the person performing the ceremony to a penalty, but has no bearing upon the validity of the marriage. *Emily J. Griswold* (Actg. Sec. Gorham), 3 P. D. (o. s.), 492.

37. Abandonment equivalent to divorce.

A voluntary and permanent abandonment of a husband by a wife will be held to be equivalent to divorce and a complete waiver of such pensionable rights as might be derivable from the marriage. *Mary A. Garman* (Asst. Sec. Bussey), 3 P. D., 179.

Overruled: 7 P. D., 247.

38. Decree of nullity, effect of

Claimant, a widow pensioner, was dropped from the rolls on the ground of remarriage. While a claim for restoration on the ground that said remarriage was null and void because of the husband having a wife then living and undivorced, was pending, a decree of nullity was rendered in Pennsylvania declaring such remarriage void ab initio: *Held*, Claimant's pensionable status was not restored by reason of said decree, which took effect from its date only, and said remarriage was valid prior thereto because said former wife had abandoned the husband and remained absent in abandonment more than seven years prior to said remarriage, which abandonment was a constructive removal of said impediment; and because, also, claimant and said husband had lived and cohabited together as husband and wife, and been recognized as such, from the date of their marriage until a few years prior to the date of said decree, a period of fifteen years. *Margaret J. Anderson* (Asst. Sec. Bussey), 4 P. D., 67.

See also SUBTITLE 33.

See also DECREE; DIVORCE; JURISDICTION; EVIDENCE; DEPENDENT RELATIVES; FRAUD AND MISTAKE; ILLEGITIMACY; REMARRIAGE; WIDOWS.

MEANS OF SUPPORT.

See DEPENDENT RELATIVES.

MEDICAL CERTIFICATES.

See CERTIFICATES; EVIDENCE; RATING; RERATING.

MEDICAL DIVISION.

See PRACTICE.

MEDICAL EXAMINATION.

See ATTORNEYS; INCREASE; EXAMINATIONS.

MEDICAL QUESTIONS.

See AID AND ATTENDANCE; DEATH CAUSE; DISABILITIES; EVIDENCE; SEQUENCE; MEDICAL REFEREE.

MEDICAL REFEREE.

1. Generally.
2. An adjudicating officer.
3. Opinion conclusive.
4. Opinion generally conclusive.

5. When opinion not final.
6. Opinion generally relied on by the Department.
7. Opinion accepted in preference to that of family physician.
8. To fix rates.
9. To revise and construe reports of examining surgeons.

1. Generally.

Where, from the medical evidence adduced, it is not clear that claimant's reduction was proper, nor that an increase is not really due him, it is a proper question for the determination of the medical referee. *James R. Bartholomew* (Asst. Sec. Hawkins), 1 P. D., 190.

Unless manifest error in an opinion by the medical referee on a medical question is shown, such opinion will not be set aside on appeal. *William L. D. O'Grady* (Asst. Sec. Hawkins), 1 P. D., 222.

While the opinion of the medical referee is justly entitled to great weight in determining questions of a medical character in a pension claim, such opinion should have some evidence to support it and some facts proven upon which to base it before it should be so entitled or be permitted to control. *Minnie Shuttleworth* (Asst. Sec. Bussey), 3 P. D., 50.

All questions involving medical questions should be decided upon the weight of the medical evidence on file in the claim, giving due consideration and importance to the opinion of the medical referee upon medical and scientific points requiring professional and technical knowledge. *Lucinda Gaskell* (Asst. Sec. Bussey), 3 P. D., 87.

2. An adjudicating officer.

The medical referee is an adjudicating officer. He does not occupy the position of a witness in pension cases, but in passing upon medical questions his duties are largely judicial, and his opinions, as the highest medical authority, must be accepted as conclusive, unless it is made to appear that he has been guilty of negligence, of fraud, or of mistake. *Uriah W. Romine* (Asst. Sec. Hawkins), 1 P. D., 299.

But see 7 P. D., 142.

3. Opinion conclusive.

The opinion of the medical referee, based on the result of medical examination, is conclusive. Citing John Douglass, 1 P. D., 52. *James R. Owen* (Asst. Sec. Hawkins), 2 P. D., 390.

The opinion of the medical referee on questions coming exclusively within the province of his duties is decisive, subject only to revision by the Commissioner. *Patrick Preston* (Asst. Sec. Hawkins), 1 P. D., 41.

4. Opinion generally conclusive.

While the opinion of the medical referee on questions purely medical is generally conclusive, yet, on all questions not medical, but legal only, his opinions are entitled to no special weight. *Allen Cook* (Asst. Sec. Hawkins), 1 P. D., 365.

The statute authorizing the appointment of a medical referee contemplated the necessity of accepting the opinions of such officer as ordinarily conclusive in matters involving scientific and expert knowledge. *Lucinda Gaskell* (Asst. Sec. Hawkins), 1 P. D., 29.

The Department accepts as generally conclusive the opinions of the medical referee when based upon results of medical examinations. *Joseph F. Faulkner* (Asst. Sec. Hawkins), 1 P. D., 292; *John Douglass* (Asst. Sec. Hawkins), 1 P. D., 52.

The Department uniformly holds that where questions of a purely medical character are involved, it must be guided by its medical advisors, and the opinion of the medical referee in such cases is generally conclusive. Citing *William H. Garrison*, 1 P. D., 262; *Joseph F. Ennis*, *ibid.*, 127; *Lucinda Gaskell*, *ibid.*, 29; *Patrick Preston*, *ibid.*, 41; *Joseph F. Faulkner*, *ibid.*, 292; *Uriah W. Romine*, *ibid.*, 299; *Edward Campbell*, alias *Henry Mulholland*, 2 P. D., 75. *Isaac Sell* (Asst. Sec. Hawkins), 2 P. D., 172.

In determining questions purely medical, the Department is guided by the opinion of its medical advisors, and accepts as generally conclusive the medical referee's opinions when based on results of medical examinations. Citing *Lucinda Gaskell*, 1 P. D., 29; *Patrick Preston*, *ibid.*, 41; *John Douglass*, *ibid.*, 52; *William H. Garrison*, *ibid.*, 262; *Joseph F. Faulkner*, *ibid.*, 292; *Uriah W. Romine*, *ibid.*, 299. *William H. Scott* (Asst. Sec. Hawkins), 2 P. D., 43.

It is the settled practice of the Department to be guided in the determination of questions purely medical by the opinions of its medical advisors, and to accept as generally conclusive the opinions of the medical referee where based upon the results of medical examinations. Citing *Lucinda Gaskell*, 1 P. D., 29; *Patrick Preston*, *ibid.*, 41; *John Douglass*, *ibid.*, 52; *William H. Garrison*, *ibid.*, 262; *Joseph F. Faulkner*, *ibid.*, 292; *Uriah W. Romine*, *ibid.*, 299; and distinguishing the case of *Mary A. Buker*, 1 P. D., 108. *Margaret Mayer* (Asst. Sec. Hawkins), 2 P. D., 203.

The rule that where questions of a purely medical character are involved the opinion of the medical referee is generally held conclusive, is reaffirmed. Citing *Isaac Sell*, 2 P. D., 172; *William H. Garrison*, 1 P. D., 262; *Joseph F. Ennis*, *ibid.*,

4. Opinion generally conclusive—Continued.

127; Lucinda Gaskell, *ibid.*, 29; Patrick Preston, *ibid.*, 41; Joseph F. Faulkner, *ibid.*, 262; Uriah W. Romine, *ibid.*, 299; Henry Mulholland, 2 P. D., 75. *Jeremiah Everly* (Asst. Sec. Hawkins), 2 P. D., 241.

5. When opinion not final.

The opinions of the medical referee of the Bureau of Pensions as a rule are to be accepted, but in no case to be regarded as necessarily final. In appeals coming before the Department the right is reserved to review the whole case—medical opinions as well as others—in connection with all the evidence in the accompanying papers. *Josiah T. Tuttle* (Asst. Sec. Bussey), 3 P. D., 52.

6. Opinion generally relied on by the Department.

In medical questions the Department is generally governed by the opinion of the medical referee, as is held in *William H. Garrison*, 1 P. D., 262; *Uriah W. Romine*, *ibid.*, 299; *William Scott*, 2 P. D., 43. *Henry Halstead* (Asst. Sec. Hawkins), 2 P. D., 221.

Where the question raised on appeal is chiefly medical, the Department relies mainly upon the opinion of the medical referee when approved by the Commissioner of Pensions. *Francis M. Varner* (Asst. Sec. Reynolds), 7 P. D., 161.

The Department must necessarily rely, to a great extent, upon the judgment and opinions of the medical referee, especially when based upon a thorough medical examination. *Jacob Schulde* (Asst. Sec. Hawkins), 2 P. D., 338.

In the determination of questions purely medical the Department accepts the opinions of its medical advisers as generally conclusive, when based upon the result of medical examinations. *Aaron Gaw* (Asst. Sec. Hawkins), 1 P. D., 369.

Where questions of a purely medical character are involved, the Department is guided by its medical advisers, the opinions of the medical referee being generally conclusive. *William H. Garrison* (Asst. Sec. Hawkins), 1 P. D., 262.

While the opinion of the medical referee on purely medical questions should, as a rule, be accepted as decisive, yet it should not in any case be regarded as final, but subject, as is the opinion of other subordinates, to revision by the Chief of the Bureau. *Appeal of T. B. Hood, medical referee, in re George W. Greene* (Sec. Chandler), 3 P. D. (o. s.), 229.

7. Opinion accepted in preference to that of family physician.

The Department relies upon the medical conclusion of the medical referee, based upon the medical evidence in the case,

7. Opinion accepted in preference to that of family physician—
Continued.

in preference to opinions of family physicians; but will remedy any errors in the medical referee's conclusions when any reason for inferring an error or mistake therein is shown by the evidence or otherwise. Citing *Joseph F. Ennis*, 1 P. D., 127. *Ziba Yarnell* (Asst. Sec. Hawkins), 2 P. D., 25.

8. To fix rates.

It is the province of the medical referee, subject to the approval of the Commissioner of Pensions, to fix ratings in accordance with the medical evidence on file. *John Allee* (Asst. Sec. Hawkins), 1 P. D., 241.

9. To revise and construe reports of examining surgeons.

Section 4776, Revised Statutes, gives to the medical referee the right to examine, revise, and construe the reports of examining surgeons. Upon his opinion, thus made, the Department relies, and will accept it in preference to that of family physicians. *Joseph F. Ennis* (Asst. Sec. Hawkins), 1 P. D., 127.

See also APPEALS; DEATH CAUSE; EVIDENCE; RATING; RERATING.

MEDITERRANEAN FLEET.

See BOUNTY LAND; SERVICE.

MEXICAN WAR.

1. Service pensions—act of January 29, 1887.
2. Commencement of.
3. Termination of.

1. Service Pensions—act of January 29, 1887.

The pension provided for by the act of January 29, 1887, is strictly and purely a service and not an invalid pension. *Theodore J. Eckerson* (Sec. Vilas), 2 P. D., 309.

2. Commencement of.

The Mexican war commenced April 24, 1846. *Communication* (Sec. Ewing), 1 L. B. P., 165.

April 24, 1846, the date of the first overt hostile act on the part of Mexico, was the date of the act referred to in the preamble of the act of May 13, 1846, declarative of the existence of the war with Mexico, and was the commencement of the war with that country. Citing decision by Sec. Ewing, Mayo and Moulton, 527; and historical authorities. *Thomas Daly* (Asst. Sec. Hawkins), 2 P. D., 220.

3. Termination of.

This Department has decided peace to have been established with Mexico on the 30th of May, 1848; consequently no soldier can, subsequent to that date, have volunteered or enlisted to serve "during the present war with Mexico," as required by the act of February 11, 1847, to entitle him to bounty land. *Communication to S. I. Levi in re Michael Salmon* (Sec. McClelland), 3 L. B. P., 9.

The Mexican war terminated May 30, 1848, and service rendered thereafter does not entitle to bounty land under the act of March 3, 1855. *Thomas Bruce* (Sec. McClelland), 4 L. B. P., 261.

For pensionable purposes, May 30, 1848, is accepted as the date of the legal termination of the Mexican war. *Instructions to Commissioner* (Asst. Sec. Reynolds), 7 P. D., 240.

See also BOUNTY LAND; DESERTION; INCREASE; MARINE CORPS; SERVICE.

MILITARY POST.**Washington City one.**

Unquestionably the city of Washington is a military post in the sense in which the word is used in section 4694, Revised Statutes. *Martha M. Frisby* (Asst. Sec. Bussey), 3 P. D., 344.

See also HOSPITAL STEWARD; POST.

MILITIA.

1. Generally.
2. Delaware.
3. Kentucky.
4. Minnesota.
5. Missouri.
6. Pennsylvania.

1. Generally.

Members of militia called out and mustered into service under the President's proclamation of April 15, 1861, and who may be disabled in the service, are entitled to pension benefits of the second section of the act of August 2, 1813. *Atty. Gen. Bates*, 10 Op., 197.

Members and widows of members of the State militia are not entitled to pension unless such member was wounded in battle. This case is governed by section 9 of the act of July 4, 1864, and the act of March 25, 1862, has no application. *Martha A. Foster* (Sec. Cox), 6 L. B. P., 519.

Members of State militia in the service of a State during the war of 1812 who were not mustered into the service of the

1. **Generally**—Continued.

United States, nor under command of an officer of the United States, and for whose services the State was not reimbursed by the United States, are not entitled to pension. *Rebecca S. Smith* (Sec. Schurz), 4 P. D. (o. s.), 269.

If a State commission was issued to a person, giving him rank from a date prior to the date at which he was injured, and the War Department should report that the organization to which he belonged was in the service of the United States, and that a vacancy existed in the rank conferred by the commission, and it should appear that he was not then disabled for military service, and that he did not neglect or refuse to be mustered, he can, under section 4696, Revised Statutes, be treated as having been an officer in the service of the United States; and if he was a member of the militia of the State not accepted into the service of the United States, there is no provision of law under which he could be allowed a pension, *James H. Carpenter* (Sec. Kirkwood), 8 P. D. (o. s.), 452.

Claims of State militiamen or nonenlisted men claiming disabilities contracted in temporary service in battle against rebels or Indians are barred unless prosecuted successfully to issue prior to July 4, 1874. *Andrew T. Still* (Asst. Sec. Hawkins), 1 P. D., 103.

This soldier's service being in a regiment which was not in the service of the United States, a claim for pension by his minor children is not valid unless prosecuted to a successful issue prior to July 4, 1874, under sections 4693 and 4702, Revised Statutes, *Minors of Hamilton S. Wilson* (Asst. Sec. Hawkins), 2 P. D., 364.

Under sections 4693 and 4702, Revised Statutes, the widow or minor children of any person named in the third paragraph of said section 4693 as pensionable thereunder must file a claim and prosecute it to a successful issue prior to July 4, 1874, in order to be entitled to pension. Reconsidering and adhering to decision of February 21, 1889. *Minors of Pharaoh B. Long* (Asst. Sec. Bussey), 4 P. D., 22.

A State militiaman whose military service was rendered in an organization that was never incorporated in the service of the United States, but remained under the authority of the State government, was not in the service of the United States for pensionable purposes. *Thomas Haladay* (Asst. Sec. Bussey), 5 P. D., 413.

No person other than the President of the United States has authority to call the militia of any State into the United States service, and a militia organization called into service by

1. **Generally**—Continued.

any other authority is not thereby in the service of the United States for pensionable purposes, under the first subdivision of section 4693, Revised Statutes. *John Godfrey* (Asst. Sec. Reynolds), 7 P. D., 561.

A State militiaman, claiming under subdivisions 1 and 3, section 4693, Revised Statutes, must show that his organization was called into service by the President of the United States. If such is not shown, he must show that his organization was acting under orders of an officer of the United States, and that he received a wound or injury in battle with either rebels or Indians; and, further, his claim must have been prosecuted to a successful issue prior to July 4, 1874. *James L. Hicks* (Asst. Sec. Reynolds), 8 P. D., —.

The above decision cites the following decisions as holding that the organizations named were not in the Federal service, and members thereof are accordingly not pensionable:

(a) **ALABAMA.**

Captain Dickey's company, Alabama Volunteer Scouts and Guides. *Marion Berry* (Asst. Sec. Reynolds), 113 L. B., 339; *James West* (Asst. Sec. Reynolds), 126 L. B., 214; *M. R. Latham* (Asst. Sec. Reynolds), 148 L. B., 403.

Captain Springfield's company, Alabama Independent Scouts and Guides. *Widow of H. B. Springfield* (Asst. Sec. Reynolds), 115 L. B., 457.

(b) **DELAWARE** (under act of June 27, 1890).

See *Sarah A. Kersey* (SUBTITLE 2).

(c) **INDIANA.**

Company A, Indiana Legion. *Widow of G. W. Devine* (Asst. Sec. Reynolds), 112 L. B., 461.

(d) **KANSAS.**

Company F, Second Kansas Militia. *Dennis Moriarity* (Asst. Sec. Reynolds), 131 L. B., 112.

Fifth Kansas State Militia. *Almira Boyer* (Asst. Sec. Reynolds), 120 L. B., 310.

Company B, Nineteenth Kansas Militia. *James Richardson* (Asst. Sec. Reynolds), 121 L. B., 159.

Company F, Twenty-third Kansas Militia. *Charles Morasch* (Asst. Sec. Reynolds), 121 L. B., 51.

Company F, Third Kansas Volunteer Militia. *John Godfrey* (Asst. Sec. Reynolds), 7 P. D., 561.

1. Generally—Continued.

(e) KENTUCKY.

Company F, Sixty-fifth Kentucky Enrolled Militia. *Jonathan Stanbo* (Asst. Sec. Reynolds), 113 L. B., 96.

Company B, North Cumberland Battalion, Kentucky State Guards. *Robert Baldwin* (Asst. Sec. Reynolds), 114 L. B., 225½.

South Cumberland Battalion, Kentucky State Guards. *Alvin West* (Asst. Sec. Reynolds), 7 P. D., 74, and *James C. Polly*, *ibid.*, 122 L. B., 171.

Seventeenth Regiment Green River Battalion, Kentucky State Guards. *Joseph P. Mills* (Asst. Sec. Reynolds), 120 L. B., 217.

Green River Battalion, Kentucky Troops. *Marcus Taylor* (Asst. Sec. Bussey), 51 L. B., 177.

Company E, Mercer County, Kentucky Infantry. *J. C. Donovan* (Asst. Sec. Reynolds), 131 L. B., 234.

Hall's Gap Battalion, Kentucky State Troops. *William Walls* (Asst. Sec. Reynolds), 116 L. B., 65, and *John W. Short*, *ibid.*, 128 L. B., 247.

Saudy Valley Battalion, Kentucky Cavalry Guards. *James O'Brien* (Asst. Sec. Reynolds), 122 L. B., 192.

Also *Louisa S. Norris* and *Alvin West* (see SUBTITLE 3).

(f) MINNESOTA.

See *Jacob Nix* (SUBTITLE 4).

(g) MISSOURI.

(Six Months' Militia)—Co. A, Kimball's Six Months' Militia, *Joseph Kenedy* (Asst. Sec. Reynolds), 188 L. B., 97; *Thomas Haladay* (Asst. Sec. Bussey), 5 P. D., 413.

Co. A, Mercer County Battalion, Six Months' Militia. *James Vanderpool* (Asst. Sec. Reynolds), 188 L. B., 482.

(Enrolled Missouri Militia)—Co. A, Mercer County Battalion, Missouri Militia. *E. A. Hunt* (Asst. Sec. Reynolds), 183 L. B., 441.

Also *James H. Motley* (Asst. Sec. Reynolds), 111 L. B., 63; *G. H. Daniel*, *ibid.*, 112 L. B., 459; *John Schaffer*, *ibid.*, 122 L. B., 167; and *John W. Delaney*; *Frederick W. Tappmyer*; *Widow of John H. Schuler*; *Mary A. Seidenstein*. (See SUBTITLE 5.)

(Missouri Home Guards—Class 1)—Major Rapley's Battalion, Co. A, Missouri Home Guards. *Riley Hutchinson* (Asst. Sec. Reynolds), 126 L. B., 237.

Captain William R. Gregory's Co. A, Butler County Home Guards. *Ibid.*

1. Generally—Continued.

(g) MISSOURI—Continued.

Jackson County Home Guards. *Albert Flacy* (Asst. Sec. Reynolds), 121 L. B., 436.

Westport Missouri State Militia. *Ibid.*

(Provisional Companies of Enrolled Missouri Militia)—Captain Cook's Company, Boone County. *Thomas Hudnel* (Asst. Sec. Reynolds), 118 L. B., 488.

Also *Widow of John H. Schuler*. (See SUBTITLE 5.)

(Missouri Militia)—Co. A, Kansas City Station Guards. *Thomas Smith* (Asst. Sec. Reynolds), 132 L. B., 371.

(h) PENNSYLVANIA.

Colonel McLane's Erie Regiment, Pennsylvania Militia. *A. J. Wolrerton* (Asst. Sec. Reynolds), 110 L. B., 487.

(i) WEST VIRGINIA.

Captain Damron's West Virginia Scouts. *Jesse Jarrel* (Asst. Sec. Reynolds), 111 L. B., 365.

167 West Virginia Militia. *Ibid.*

(j) QUARTERMASTER VOLUNTEERS.

Third Quartermaster Volunteers. *Widow of J. C. Rambo* (Asst. Sec. Reynolds), 111 L. B., 68.

And cites the following decisions as holding the organizations named were in the Federal service, and members thereof are, accordingly, pensionable:

(k) DELAWARE (under general law).

Sixth Regiment of Delaware Volunteers. (Dictum.) *Sarah A. Kersey* (Asst. Sec. Bussey), 6 P. D., 1.

(l) MISSOURI.

(Home Guards—Class 2)—*Charles Messmer* (Asst. Sec. Bussey), 6 P. D., 20.

Also *Charles J. H. Noack*. (See SUBTITLE 5.)

(Provisional Regiments of Enrolled Missouri Militia)—*Robert Morrison* (Asst. Sec. Bussey), 6 P. D., 22.

Also *John C. Hargraves*. (See SUBTITLE 5.)

(m) PENNSYLVANIA.

42 Pennsylvania Volunteers. *Samuel M. Gring* (Asst. Sec. Bussey), 62 L. B., 188.

Also *Randolph M. Manley*; *B. F. Beazell*; *William G. Tiece*. (See SUBTITLE 6.)

And citing generally: *Atty. Gen. Bates*; *Minors of Pharaoh B. Long*; *Andrew T. Still*; *Martha A. Foster* (See ANTE, this SUBTITLE); and *Maria C. Worthington* (Asst. Sec. Bussey), 5 P. D., 203.

2. Delaware.

Members of the Sixth Regiment, Delaware Volunteer Militia, are not pensionable under the act of June 27, 1890, as they were not in actual service of the United States for ninety days. Citing *Albert K. Ransom*, 5 P. D., 183; also *Randolph M. Manley*, *ibid.*, 295. *Sarah A. Kersey* (Asst. Sec. Bussey), 6 P. D., 1.

3. Kentucky.

The South Cumberland Battalion, Kentucky Guards, were in the service of the United States, and the members thereof or their widows and minor children are pensionable under sections 4692, 4693, and 4702, Revised Statutes, notwithstanding the report of the War Department to the contrary. *Louisa S. Norris* (Asst. Sec. Bussey), 5 P. D., 42.

Overruled: 7 P. D., 74.

A State militiaman is not pensionable under the first subdivision of section 4693, Revised Statutes, unless his disability was incurred in the line of duty while actually in the service of the United States by direction and under authority of the President. A State militiaman under orders from a United States officer is not thereby in the service of the United States. A military organization is not in the United States service unless such organization is made a part of the Army by being ordered or called into the service by the President. The case of *Louisa S. Norris*, 5 P. D., 42, overruled and set aside. Claimant is not pensionable under the third subdivision of section 4693, Revised Statutes, because he was neither wounded nor injured in battle with rebels or Indians, nor has he prosecuted his claim to a successful issue prior to July 4, 1874. *Alvin West* (Asst. Sec. Reynolds), 7 P. D., 74.

4. Minnesota.

Members of militia of Brown County, Minn., were not volunteers, and claims based upon such service do not come within the provisions of the pension law. They were called into service by the sheriff of the county. *Jacob Nix* (Sec. Schurz), 4 P. D. (o. s.), 260.

5. Missouri.

The officers and members of the German Regiment, Missouri Home Guards, their widows and children, are entitled to pension. *Charles J. H. Noack* (Sec. Schurz), 7 P. D. (o. s.), 250.

There being no record that the Thirty-fourth Enrolled Missouri Militia was in the service of the United States, and claim not having been prosecuted to a successful issue, as prescribed by section 4693, Revised Statutes, rejection of the claim was proper. *Fredk. W. Tappmeyer* (Sec. Schurz), 6 P. D. (o. s.), 407.

5. Missouri—Continued.

The claim of a member of a provisional regiment, Enrolled Missouri Militia, comes under section 4722, Revised Statutes, but the United States is not charged with any duty in regard to the records of the military forces to which such section applies, as such forces were within the State of Missouri, and cooperating with the United States forces; and the decision in *James H. Carpenter*, concerning the records of the War Department, does not apply, as it refers only to those organizations which were accepted into the service of the United States. *John C. Hargraves* (Sec. Kirkwood), 9 P. D. (o. s.), 166.

Section 4722, Revised Statutes, does not extend the benefits of the general pension laws to the whole of the Enrolled Missouri Militia, but only to that comparatively small portion of it that was called the Provisional Missouri Militia, or the Provisional Enrolled Missouri Militia, and to them only under the circumstances stated. Said section does not cover service in Company A, Fifty sixth Regiment Enrolled Missouri Militia; and as this claim was not filed until 1882, it is not admissible under the third paragraph of section 4693, Revised Statutes. *Mary A. Seidenstein* (Sec. Teller), 12 P. D. (o. s.), 267.

A member of Company I, Seventy-first Regiment Enrolled Missouri Militia, is not pensionable under the first paragraph of section 4693, Revised Statutes, not being enlisted in the service of the United States, nor under the third paragraph of said section, unless his claim was prosecuted to a successful issue prior to July 4, 1874, nor under section 4722, Revised Statutes, as the provisions of said section do not extend to the Enrolled Missouri Militia. *John W. Delany* (Sec. Teller), 15 P. D. (o. s.), 353.

Members of the Scott County (Mo.) Home Guards are not pensionable under section 2 of the act of June 27, 1890, as their service was less than ninety days, according to the Hawkins-Taylor Commission. *Charles Messmer* (Asst. Sec. Bussey), 6 P. D., 20.

The provisions of the "joint resolution to restore the status of the Missouri militia who served during the late war" do not extend to the Enrolled Missouri Militia nor to the provisional companies of Missouri militia. *Katherine Schuler, widow of John H. Schuler* (Asst. Sec. Reynolds), 8 P. D., —.

A member of a provisional company, Enrolled Missouri Militia, which was organized under General Order 107, emanating in June, 1864, from the adjutant-general of the State of Missouri, and was never under Federal authority, but solely for temporary service and local defense, even though it may

5. Missouri—Continued.

have formed a component part of a regiment, is not within the terms of the act of February 15, 1895. Such companies are clearly distinguished by the record from the Provisional Missouri Militia mentioned in said act and in section 4722, Revised Statutes. *James L. Hicks* (Asst. Sec. Reynolds), 8 P. D., —.

The Missouri Six Months' Militia, the Enrolled Missouri Militia, Class 1 of Missouri Home Guards, and the Provisional Companies Enrolled Missouri Militia, were never in the Federal service. Members of the Provisional Regiments Enrolled Missouri Militia have pensionable status under section 4722, Revised Statutes. *Ibid.*

6. Pennsylvania.

A person who enlisted in a regiment of the Pennsylvania militia pursuant to the President's proclamation for six months' volunteers, even if the regiment was not actually mustered into the service of the United States, but was engaged in its service, has a pensionable status under the first subdivision of section 4693, Revised Statutes. *Randolph M. Manley* (Atty. Gen. Miller), 20 Op., 322.

The members of the Forty-seventh and Fifty-eighth Pennsylvania Volunteer Militia, enlisted and received into the United States service in pursuance of the President's proclamation of June 15, 1863, are pensionable under the first subdivision of section 4693, Revised Statutes. *Randolph M. Manley* (Asst. Sec. Bussey), 5 P. D., 295; *B. F. Beazell* (Asst. Sec. Bussey), *ibid.*, 384.

Claimant was a member of a regiment of Pennsylvania militia which, by authority of the President, was accepted into the United States service and assigned to the Third Brigade, Third Division, First Army Corps, right wing of the Army of the Potomac, and while in such command participated in the battles of South Mountain and Antietam, Md., from September 14 to 17, inclusive, and was wounded; he was paid by the United States for fourteen days' service: *Held*, That he was in the military service of the United States, and comes within the provisions of the first subdivision of section 4693, Revised Statutes. *William G. Trice* (Asst. Sec. Reynolds), 7 P. D., 85.

See also BOUNTY LAND; EVIDENCE; SOUTH CUMBERLAND (KY.) GUARDS.

MINORITY.

See MINORS.

MINORS.

1. Generally.
2. Act of July 4, 1836.
3. Act of June 27, 1890.
4. Increase on account of act of July 25, 1868.
5. Insane and helpless minor.
6. Limitation, act of June 27, 1890.
7. Limitation, act of March 3, 1879, and prior laws.
8. Stepchildren.
9. Surviving minor.
10. Under special acts.
11. When widow not entitled, minor's rights.
12. Where widow draws pension after remarriage.

1. Generally.

A person enlisted in service and while there disabled so as to be entitled to pension under existing laws, but who is subsequently discharged as a minor before the expiration of his term, does not lose his claim to a pension. *Ruling* (Sec. Cass), Pension Laws, etc. (1849), p. 101.

Minor brothers and sisters are entitled to pension, notwithstanding the ability of their stepfather to support them. *Guardian of minors of Christian Haas* (Sec. Delano), 2 P. D. (o. s.), 500.

Minors of colored soldiers are entitled to pension whether the mother died prior or subsequent to the soldier's enlistment. *Guardian of minors of Samuel Statesman* (Sec. Delano), 2 P. D. (o. s.), 345.

Minors, as mentioned in section 4702, Revised Statutes, is construed by the Department to relate only to children born in lawful wedlock, while section 4704 presupposes a legal marriage of the parents. *Rudolph Rose* (Sec. Schurz), 6 P. D. (o. s.), 213.

The exact date of birth of a claimant for minor's pension must be satisfactorily established. *Minors of Henry M. Wilkerson* (Asst. Sec. Hawkins), 2 P. D., 250.

The *lex loci* does not determine, in pension cases, at what age minority ends, but under the pension laws (the law under consideration in this case being the act of March 1, 1889) minority ends at the age of 16. *Lewis J. Brooks* (Asst. Sec. Bussey), 4 P. D., 212.

The minor child must also be legitimate. *Sarah A. Morris* (Asst. Sec. Reynolds), 7 P. D., 29.

Under the pension laws a minor is one under 16 years of age. *Ibid.*

1. Generally—Continued.

Minors of a colored soldier by a woman to whom he was joined only by a slave marriage, and who was not living with him or recognized by him as his wife at the time of his enlistment, are not pensionable. Case of minors of William Toller (7 P. D., 545) cited and approved. *Minors of James Graham* (Asst. Sec. Reynolds), 8 P. D., 320.

The child of a colored soldier by a woman who was not living with him as his wife at the date of his enlistment, said soldier having died in the service, is not pensionable as a minor child of said soldier under the provisions of section 4705, Revised Statutes, citing case of minors of William Toller (7 P. D., 545), reaffirming ruling on appeal of minors of Peter Williams (2 P. D., 383). *Minors of David Rankin* (Asst. Sec. Reynolds), 8 P. D., —.

In a claim by the minor children of a deceased Indian soldier the fact that their ages can not be exactly determined is not a sufficient reason why their claim should be rejected; and the evidence in the case enabling their ages to be approximately ascertained so that a date may be fixed by which an overpayment of pension may be avoided, pension should be allowed; and as the years of their respective births are thus satisfactorily shown, the first day of the year may be taken. *Minors of James Height* (Asst. Sec. Reynolds), 8 P. D., —.

2. Act of July 4, 1836.

Where a soldier embraced in the first section of the act of July 4, 1836, has died leaving a widow and children, and the widow has married before the passage of the act, the children within the equity of the law, and by a liberal construction of its provisions, are entitled to its benefits. *Atty. Gen. Butler*, 3 Op., 147.

3. Act of June 27, 1890.

It is the theory of the law enacted June 27, 1890, that minor children, under the age of 16 years, are, by reason of their minority, dependent for pensionable purposes, the age limit which is distinctly prescribed being the only requisite condition in addition to the fact that claimants are the minors of an officer or of an enlisted man "who served ninety days or more in the Army or Navy of the United States during the late war of the rebellion and who was honorably discharged." Proof of dependence in a pecuniary point of view is not necessary to establish such a claimant's pensionable status. *In re Charles H. Donnelly & Co., attorneys* (Asst. Sec. Bussey), 5 P. D., 210.

3. Act of June 27, 1890—Continued.

The sum of \$2 per month, as provided in section 3 of the act of June 27, 1890, for each minor under 16 years of age, is not set apart for each minor child; it is not the minor's pension, during the lifetime or the widowhood of the mother; but it is to be paid to the mother as a part of her pension, as widow, so long as the child is under 16 years of age. *Catherine Lott* (Asst. Sec. Bussey), 5 P. D., 382.

Where the soldier dies leaving no widow, but a minor child without other means of support than its daily labor, such child is pensionable under the act of June 27, 1890, from the date of filing application. *A. P. Alexander, attorney* (Asst. Sec. Bussey), 6 P. D., 40.

Where a widow pensioner under the act of June 27, 1890, dies, soldier's minor children should receive the pension from the date of her death until they severally attain the age of 16 years, whether a formal application for such pension be made or not. *Ibid.*

4. Increase on account of act of July 25, 1866.

A widow who was, at the date of the passage of the act of July 25, 1866, a pensioner under a special act is entitled to increase provided by said act of 1866 on account of minor children, although it has hitherto been the general construction that the provisions of the general law are not applicable to pensioners under special acts, the practice being probably sanctioned by the statutes under which it arose. *Anna E. Ward* (Sec. Browning), 6 L. B. P., 227.

Each and every minor child is entitled, under the second section of the act of July 25, 1866, to \$2 per month until it is 16 years of age, and there is no authority of law for excluding any therefrom. *Minors of Thomas Rue* (Sec. Cox), 7 L. B. P., 51.

It is only upon the death, remarriage, or abandonment of the mother that minor children become pensionable in their own right, and if the widow pensioner dies without having claimed the benefits of the act of July 25, 1866, as to additional pension on account of minors, the law confers no right on the minors to prosecute a claim for arrears under said act. *Guardian of minors of Michael O'Brien* (Sec. Delano), 2 P. D. (o. s.), 408.

The pension which is allowed the minors of a deceased soldier can not be divided except in the distribution of the sum total thereof among the minors themselves, and when one dies the whole original pension goes to the living, but the \$2 additional for each child, the "increase," as it is generally called, first provided in the act of July 25, 1866, is not a part of the original pension aforesaid inherited from the soldier, and consequently

4. Increase on account of act of July 25, 1866—Continued.

lapses whenever the child named for it dies without receiving the same, it being granted exclusively to said child, and no one else having an interest therein. *Minors of John A. McAlister* (Asst. Sec. Bussey), 3 P. D., 318.

5. Insane and helpless minor.

To come within the proviso of section 3 of the act of June 27, 1890, as to insane; idiotic, or otherwise permanently helpless children a child must have been upon the pension roll at the date of the passage of said act. *Minor of Samuel A. Kephart* (Asst. Sec. Bussey), 4 P. D., 419.

Overruled: 7 P. D., 163.

The third section of the act of June 27, 1890, applies to only such insane, idiotic, or permanently helpless minor children as were on the pension roll at the date of the passage of the act, or who succeeded to or were granted a pension subsequent to said date; and there is no provision in the act whereby a minor's pension that has lapsed by reason of age or by operation of law may be revived or started afresh on account of either a physical or a mental disability. *Catherine Lott* (Asst. Sec. Bussey), 5 P. D., 382.

Overruled: 7 P. D., 163.

The proviso in section 3 of the act of June 27, 1890, providing for the perpetuity of the pensions of minor children who are "insane, idiotic, or otherwise permanently helpless" applies to only those minors who are already pensioned under the general law or who may be pensioned under the act of June 27, 1890. It does not restore names to the pension rolls. *Minor of Joseph Gateson* (Asst. Sec. Bussey), 5 P. D., 417.

Overruled: 7 P. D., 163.

If a child has passed the age of 16 years without applying for pension under the act of June 27, 1890, it is not pensionable under the proviso of section 3 of the act of June 27, 1890, relative to insane, idiotic, or otherwise permanently helpless children, although it may have been at one time pensioned as a minor under former laws, its pension having ceased on its attaining its sixteenth year. *A. P. Alexander, attorney* (Asst. Sec. Bussey), 6 P. D., 40.

Under the proviso of section 3 of the act of June 27, 1890, the pension of an insane, idiotic, or permanently helpless minor which has ceased by reason of the minor attaining the age of 16 years before the passage of the act, is renewable from the date of the application therefor upon proof of the continued

5. Insane and helpless minor—Continued.

and uninterrupted insanity, idiocy, or helplessness of the claimant. Cases of Schuyler C. Kephart, 4 P. D., 419, and Alphonseine Gateson, 5 P. D., 417, overruled. *Minors of Jacob Loeb* (Asst. Sec. Reynolds), 7 P. D., 163.

The "insane, idiotic, or otherwise permanently helpless minor child" provided for under the first proviso to section 3 of the act of June 27, 1890, refers to a minor under 16 years of age at the death of the soldier father, under the provisions of the amended section 4702, Revised Statutes, or who is under 16 years of age at date of filing application under said section 3 of said act of June 27, 1890. *Widow of Abraham Dubois* (Asst. Sec. Reynolds), 8 P. D., —.

The payment of the \$2 increase to the mother on account of an insane or helpless minor will be continued after such minor has attained its sixteenth year and so long as such insanity or helplessness continues, subject to the limitations imposed by section 4706, Revised Statutes, and act of August 7, 1882, amending section 4702, Revised Statutes. *Instructions to Commissioner* (Asst. Sec. Reynolds), 7 P. D., 167.

The rate to be allowed an insane or helpless minor is governed by the law under which the pension is granted. Where more than one minor has been pensioned, and the pensionable period of one or more of them has not expired when an insane or helpless minor has attained its sixteenth year, said minors are entitled to receive their pensions until the expiration of their pensionable minority, and the pension of the insane or helpless minor should continue at the rate of \$2 until the youngest child attains its pensionable majority, at which date title to the continuance attaches at the rate provided by the law under which the pension was granted. *Ibid.*

A soldier's child who becomes insane or permanently helpless after he has completed his sixteenth year is not entitled to a pension under the provisions of the third section of the act of June 27, 1890. *John J. Marshall* (Asst. Sec. Reynolds), 7 P. D., 213.

A deceased soldier's minor 17 years of age who has been sent to school eight years and can not be taught to read, write, or count, who has no memory nor sufficient mind to properly care for his body or the offices of nature, and who is incapable of transacting any business, is so "idiotic and permanently helpless" as to come within the proviso of the third section of the act of June 27, 1890, entitling him to a continuance of the pension heretofore granted for his benefit. *Clarence Loveitt* (Asst. Sec. Reynolds), 7 P. D., 405.

5. Insane and helpless minor—Continued.

A declaration under section 3 of the act of June 27, 1890, on behalf of an alleged helpless child (at present a copensioner with other minors) for continuance of pension to an insane, idiotic, or otherwise permanently helpless minor filed prior to the period when such minor shall have attained the age of 16 years will not be considered nor the claim adjudicated until such alleged helpless child becomes 16 years of age. And in the event such continuance of pension shall be granted by reason of permanent helplessness the same will commence on the day following the termination of the minor's pension previously granted. *Minor of George W. Good* (Asst. Sec. Reynolds), 8 P. D., —.

During the life of the widow pensioner, not married, no minor has any pensionable rights, and the only allowance that can be made on account of a helpless minor under the act of June 27, 1890, in such a case is the continuance of the \$2 increase to the widow, and she alone can apply for and obtain it. Commencement of increase of a widow's pension on account of an insane or helpless minor must be from the date of filing a proper application by the widow, and can not date from the filing of a power of attorney from the widow. *Sarah J. Zimmerman* (Asst. Sec. Reynolds), 8 P. D., —.

The third section of the act of June 27, 1890, makes no grant of a pension to an insane, idiotic, or permanently helpless child of a deceased soldier who is over the age of 16 years, but provides only for the continuance of a pension heretofore granted or hereafter to be granted to such a minor child under the age of 16 years or to a widow on its account. *Minors of William F. Pettit* (Asst. Sec. Reynolds), 8 P. D., 306.

The continuance of pension to a minor who has been pensioned after he has become 16 years old is based on the fact that he is "permanently helpless." The loss of one leg does not render a minor "permanently helpless" in contemplation of the statute. *John M. Laughlin, minor* (Asst. Sec. Reynolds), 8 P. D., 52.

The term "permanently helpless," in the third section of the act of June 27, 1890, is, in its application to the capacity of a minor to earn a support, relatively of the same meaning as the words "insane" and "idiotic," used in the same clause. *Ibid.*

6. Limitation—act of June 27, 1890.

A child who is over 16 years of age at the time of filing an application for minor's pension under the act of June 27, 1890, is not pensionable under said act, although it may be permanently helpless, insane, or idiotic. *Minor of Elbridge Kennard* (Asst. Sec. Bussey), 6 P. D., 74.

6. Limitation—act of June 27, 1890—Continued.

Held, Where pension granted to widow on account of a minor child of her deceased husband has been terminated because such child had attained its sixteenth year, and said child has been continuously since reaching its sixteenth year insane, idiotic, or otherwise permanently helpless, pension may be allowed it (subject to the right of other minor children of the deceased father to participate with it in such pension during their minority), after the termination of the widow's right to pension, from the date of filing application therefor subsequent to June 27, 1890, upon proof of its continued insanity, idiocy, or permanent helplessness, the rate of such pension being determined by the law under which original title is taken. (See Letter of Instructions, 7 P. D., 167.) So much of decisions of May 11, 1894, in claim of child of David Gillian, deceased, and of May 23, 1895, in claim of child of Hiram F. Parker, deceased, as is in conflict herewith is overruled. *Minor of Joseph Disbrow* (Asst. Sec. Reynolds), 8 P. D., 142.

There is no provision of law by which a helpless or idiotic child who was over 16 years of age at the death of the soldier father can be pensioned. *Widow of Abraham Dubois* (Asst. Sec. Reynolds), 8 P. D., —.

7. Limitation—act of March 3, 1879, and prior laws.

Where a soldier dies, leaving no widow, but a minor child, such child is pensionable, although it does not file its application until it has attained its sixteenth year, and if he dies leaving a widow and a minor child, such child is pensionable on the remarriage or death of the widow although it does not apply until after it is 16 years of age. Citing opinions of Atty. Gen. Wirt, June 9, 1825, and Atty. Gen. Butler, April 5, 1836, in analogous cases. *Child of James H. Hawksley* (Sec. Browning), 6 L. B. P., 454.

The soldier having left a minor under the age of 16 years and the widow having remarried without the payment to her of any part of the pension, it was proper at the time this case was adjudicated, in June, 1868, to pay the pension to the minor. *Martha A. Watson* (Actg. Sec. Bell), 7 P. D. (o. s.), 212.

Where a widow survives, the minor child is pensionable only from the date of the widow's remarriage, and the fact the widow has allowed her right to pension to the date of her remarriage to lapse (under act of March 3, 1879) can not avail the child. *Minor of George G. Shumard* (Sec. Teller), 10 P. D. (o. s.), 212.

Under section 4702, Revised Statutes, a minor child has no title for any period preceding the widow's remarriage, and if such child is over 16 at date of such remarriage there is no

7. Limitation—act of March 3, 1879, and prior laws—Continued.

period of time for which it is entitled to pension, although the widow subsequently dies without having applied for pension. Following G. G. Shumard; distinguishing this from Catherine Jones, October 21, 1870, in that the law governing that case is not the law governing this; and the case of C. O. Thompson, May 4, 1869, and section 4709 as not applicable. *Minor of James M. Poole* (Sec. Teller), 14 P. D. (o. s.), 162.

The conditions under which the child or children of a deceased soldier who leaves a widow may be pensioned are (1) the remarriage of the widow; (2) the death of the widow without payment to her of any part of the pension; (3) the forfeiture of widow's pension; and these conditions must arise during the pensionable minority of the child or children. *Minors of Patrick Fitzpatrick* (Asst. Sec. Bussey), 5 P. D., 248.

Overruled: 8 P. D., 111.

The exception contained in the proviso to the second section of the act of March 3, 1879, which declares that the limitation therein contained "shall not apply to claims by or in behalf of * * * children under 16 years of age," is descriptive of a class of claims wherein title has accrued by reason of minority at the date of the father's death, and does not limit the pensionable period and age during which said minors must apply. Such claims are excepted from all limitation and are not forfeited by neglect to apply during the period of pensionable minority. *Minors of Thomas W. Baugher* (Asst. Sec. Reynolds), 7 P. D., 433.

Where soldier dies leaving a widow and minor children under the age of 16 years surviving him, such children may, under section 4702, Revised Statutes, after attaining the age of 16 years and where the death of their mother occurs thereafter without payment to her of any part of the pension, apply in their own right and receive the same pension as the father would have been entitled to had he been totally disabled, to commence from the date of his death and to continue until they respectively arrive at the age of 16 years. Cases of Mary J. Hix, 5 P. D., 79, and Patrick Fitzpatrick, 5 P. D., 248, holding a contrary view, overruled. *Minors of Eli Phipps* (Asst. Sec. Reynolds), 8 P. D., 111.

8. Stepchildren

When a widow claims pension under act of June 27, 1890, for herself and her minor child, and afterwards files an affidavit declaring for children of the soldier by a former marriage, and the guardian of the children files another declaration claiming on their account: *Held*, That the two declarations constitute but

8. Stepchildren—Continued.

one claim, for which but one fee can be paid. Reaffirming case of Sarah Clark, 7 P. D., 47. *Hattie G. Dyer* (Asst. Sec. Reynolds), 7 P. D., 160.

Section 4703, Revised Statutes, applies to the act of June 27, 1890, and the \$2 per month for each child of deceased soldier by a former wife will be paid the widow where the stepchildren are being maintained in whole or in part at the expense of a State or the public in any educational institution or in any institution organized for the care of soldiers' orphans. The second proviso of said section is in the nature of an exception to the first proviso and applies equally to the mother and step-mother of the children of the deceased soldier. *Belle Gilbert* (Asst. Sec. Reynolds), 7 P. D., 239.

Section 4703, Revised Statutes, applies to cases arising under the act of June 27, 1890, and a widow pensioner under said act may be paid \$2 per month additional pension on account of a child of her deceased husband by a former wife during such period only as she may be charged with its maintenance. *Josie Ann Myers, minor* (Asst. Sec. Reynolds), 8 P. D., 32.

Where a widow in her declaration for pension under the act of June 27, 1890, claims additional pension on account of a minor child of her deceased husband by a former wife, with whose maintenance she is not charged, such additional pension on account of such child may be allowed to commence from the date of filing such declaration; but such additional pension will not be paid until a guardian shall have been appointed and qualified, when it will be paid to such guardian. (Appeal of minors of Simon P. Showalters, 7 P. D., 478.) *Ibid.*

9. Surviving minor.

Under section 4702, Revised Statutes, the surviving child (the widow and other children being dead) is entitled to the whole pension to which the father would be entitled were he living. *Atty. Gen. Brewster*, 17 Op., 339; *Atty. Gen. MacVeagh*, 17 Op., 190.

The law regulating grants of pension to minors bestows the pension upon the children jointly, where there are two or more. Where there are several children, and some of them die before the pension is paid, the surviving child or children shall be entitled to the whole amount of the original pension, in the same manner in which they would have been had the soldier left no other child or children. (Sections 4702, 4703, Revised Statutes.) *Minors of William Brady* (Asst. Sec. Bussey), 3 P. D., 90.

9. Surviving minor—Continued.

The minors' pension, whether there be one or more than one living, constitutes but one pension, so that if there are more than one minor, and one dies, his joint interest goes to the survivor or survivors. *Minor children of Richard Martin* (Asst. Sec. Bussey), 5 P. D., 268.

Payment of pension to a widow under the act of June 27, 1890, is not payment of any part of the pension provided for widows by the "general law" (section 4702, Revised Statutes), and does not debar the minor child or children from applying for and receiving the "general law" pension from the date of the soldier's death to the date at which the widow's pension under the act of June 27, 1890, commenced. *Minor of Marion Rhoton* (Asst. Sec. Reynolds), 8 P. D., —.

10. Under special act.

The widow was pensioned under a special act and allowed \$2 per month additional for each of two minor children. Widow died July 1, 1889, and claimants applied for pension as minors under said act: *Held*, That the private act conferred a pensionable status on the widow, but not on the minors, and the rejection of the claim was proper and is affirmed. *Minors of William Hackey* (Asst. Sec. Reynolds), 7 P. D., 212.

11. When widow not entitled, minors' rights.

Where a widow is denied or deprived of pension under the provisions of section 2 of the act of August 7, 1882, by reason of open and notorious adulterous cohabitation, pension may be allowed to the minor child or children of the soldier under 16 years of age in the same manner as if the widow's right to pension had terminated by death or remarriage. Section 4706, Revised Statutes, construed. *Minors of Alfred S. Hamilton* (Asst. Sec. Reynolds), 7 P. D., 437.

The minor children of a deceased soldier have no title to pension in their own right under the act of June 27, 1890, while the widow of such soldier is living and not remarried, unless such widow has forfeited her right to pension under the act of August 7, 1882, or section 4706, Revised Statutes, notwithstanding such widow married such soldier subsequent to the passage of said act. *Minor of Lafayette G. Howard* (Asst. Sec. Reynolds), 8 P. D., 230.

12. Where widow drew pension after remarriage.

Where the widow pensioner remarried, but continued to draw her pension, including the additional pension granted on account of a minor child, until the minor became 16 years

12. Where widow drew pension after remarriage—Continued.

of age, pension to the minor to the date of the mother's remarriage was properly denied, on the ground that said minor lived with the pensioner and received the benefit of the pension. *Patrick E. Hughes* (Sec. Schurz), 5 P. D. (o. s.), 484.

Where a soldier's widow has drawn pension for herself and minor children after her remarriage, in contravention of law, and is subsequently granted a pension by reason of her second husband's service and death, in determining the amount to be withheld to reimburse the Government she should be credited with so much of such moneys as the children would have been entitled to receive from the date of her remarriage until the last surviving child attained the age of 16 years, where such children have resided with and been supported by her, as well as with the amount to which she was entitled to the date of her remarriage. *Caroline Becker* (Asst. Sec. Reynolds), 7 P. D., 365.

See also ABANDONMENT; ACCRUED PENSION; ADDITIONAL PENSION; BOUNTY LAND; COMMENCEMENT; DECLARATIONS (As to date of birth); LIMITATION; REIMBURSEMENT; REMARRIAGE; REVOLUTIONARY WAR; SPECIAL ACT; WITNESS.

MISSISSIPPI MARINE BRIGADE.

See GUNBOAT; WAR VESSELS.

MISSOURI MILITIA.

See MILITIA; BOUNTY LAND.

MISTAKE.

Where in the adjudication of an invalid claim the Bureau makes a mistake in the nature of a clerical error, which does not require proof to establish that fact, and it is brought to the attention of the Bureau, the Commissioner should correct the error as well after as before soldier's death, and his widow will be paid all accrued pension due him. *James S. Lewis* (Asst. Sec. Reynolds), 8 P. D., 128.

See also FRAUD AND MISTAKE; REIMBURSEMENT.

MOTHERS.

See ACCRUED PENSION; ADULTEROUS COHABITATION; ABANDONMENT; BOUNTY LAND; DEPENDENT RELATIVES; LIMITATION; SURGEONS.

MOTIONS.

See APPEALS.

MUSTER.**1. Generally.****2. Act of June 27, 1890.****1. Generally.**

No one is entitled to pension under the laws providing for invalids who has not been mustered into the service and joined regiment or corps. *Letter to Hon. John Holmes* (Sec. Calhoun), Pension Laws, etc. (1849), 90.

A soldier's muster into service is not essential to entitle his widow to pension where he was duly enlisted and was only prevented from being mustered in by reason of sickness incurred subsequent to his enlistment and while under military orders or authority. *Sarah Jackson* (Sec. Usher), 8 L. B. P., 158.

Under section 4693, Revised Statutes, muster into service is not essential, but enlistment and employment in one or other of the branches of service named in said section are sufficient; and the records herein showing that this claimant was enlisted, received from the Government an outfit of clothing, etc., was returned for discharge, and was honorably discharged on a surgeon's certificate of disability, it is held he is within said section. *Eliza Taylor* (Asst. Sec. Reynolds), 8 P. D., —.

2. Act of June 27, 1890.

A soldier who was duly enlisted, was in service eight months, and then rejected because of disability is pensionable under the act of June 27, 1890, although never mustered in. *Simon P. Chambers* (Asst. Sec. Bussey), 6 P. D., 260.

See also BOUNTY LAND; EVIDENCE; SERVICE.

NAVAL HOSPITALS.**1. Benefits under sections 4756 and 4757, Revised Statutes.****2. Naval Home in Philadelphia is a naval hospital.****1. Benefits under sections 4756 and 4757, Revised Statutes.**

Money benefits granted by sections 4756 and 4757, Revised Statutes, are pensions. The prohibition of section 4724, Revised Statutes, against concurrent pay and pension at the same rank is applicable to beneficiaries under the sections first above named. The pensions granted by these sections are, and were intended to be, a "further provision for the support" of the beneficiaries therein specified, in addition to pensions granted by other laws. Section 4715, Revised Statutes, and the proviso to the second section of the act of June 27, 1890, of similar import, constitute no bar and are inapplicable. Decision of December 16, 1892 (6 P. D., 167), modified. *John Spencer* (Asst. Sec. Reynolds), 7 P. D., 152.

2. Naval Home in Philadelphia is a naval hospital.

The Naval Home in Philadelphia is a naval hospital within the meaning of section 4813, Revised Statutes, and pensions due to inmates thereof must, under the provisions of said section, be paid to the Secretary of the Navy. *Richard Ewing* (Asst. Sec. Reynolds), 8 P. D., 44.

See also PAYMENT.

NAVY AND MARINE CORPS.

See ARREARS.

NEGLECT.

See ATTORNEYS; FEE.

NEGLIGENCE.

See CONTRIBUTORY NEGLIGENCE; LINE OF DUTY.

NEW DISABILITY.

A "new disability" is one which is not connected as a result with the disability for which pension was originally allowed, and does not embrace anything resulting from the progress and development of the original disabilities. Reconsidering and adhering to decision of August 3, 1888. *Theophilus Sweet*, (Asst. Sec. Hawkins), 2 P. D., 236.

The expression "a new disability" is held by the Department to refer to a disability alleged for the first time in declaration filed after a certificate for a portion of the pension has been issued. *James H. Aldrich* (Asst. Sec. Hawkins), 2 P. D., 339.

A "new disability" is a disability disconnected from the one on account of which pension is already allowed, and its origin must be proved in the same manner as in original claim. Citing *Milo B. Stevens & Co.* (fee appeal), 2 P. D., 236. *Newton C. Ridenour* (Asst. Sec. Hawkins), 2 P. D., 348.

A "new disability" is one which has no connection as a result with the disability for which pension was originally allowed, and its origin must be proved, as in all original claims. *Oliver W. Burnham* (Asst. Sec. Bussey), 4 P. D., 407.

See also COMMENCEMENT; EVIDENCE; FEE.

NEWSPAPERS.

See EVIDENCE.

NONENLISTED MEN.

See SERVICE.

NONRESIDENTS.

The act of March 1, 1893, prohibiting payment of pension to a nonresident who is not a citizen of the United States, except for actual disability incurred in the service, applies to a widow pensioner. Order No. 222 of the Commissioner of Pensions construing said act, approved. *Martha A. Lewis* (Asst. Sec. Reynolds), 7 P. D., 22.

See also **REVOLUTIONARY WAR.**

NONSPECIFIC DISABILITY.

See **COMMENCEMENT; DISABILITY; INCREASE; RATING; RERATING.**

NORTHEASTERN DISTURBANCE.

See **BOUNTY LAND (Service).**

NOTARY PUBLIC.

A notary public who is also a postmaster is not such an officer of the United States authorized to administer oaths as is mentioned in the act of March 1, 1889, and such notary public may charge a fee for the execution of pension vouchers. The act of administering an oath to an affidavit in a pension claim is not a prosecution of a claim against the Government. *Communication to Oscar Meese* (Asst. Sec. Bussey), 5 P. D., 122.

See also **FEE CONTRACT.**

NOTICE.

1. **Extension of time given in.**
2. **Of special examination.**

1. Extension of time given in.

June 13, 1895, notice was given claimant to show cause why his name should not be dropped from the roll. July 23, 1895, he requested more time, stating that he had been unavoidably delayed in procuring his evidence. His name was dropped from the roll August 1, 1895, and on August 16, 1895, he furnished the evidence promised: *Held*, That the case should be reopened and said evidence considered. *Francis S. Flint* (Asst. Sec. Reynolds), 8 P. D., 63.

2. Of special examination.

Claimant received a letter from the Pension Bureau in April, 1885, informing her that a special examination of her claim would be made, and on January 26, 1886, upon a notice served

2. Of special examination—Continued.

on claimant on that day, the special examiner took the depositions of herself and son, who declared that at the date of her son's death she was adequately supported by her husband, and she then withdrew her claim, declaring that the same was filed upon a misapprehension of the law. She now appeals on the ground of want of proper notice. It is held that she has no cause of complaint. *Hannah Bohannon* (Asst. Sec. Hawkins), 1 P. D., 335.

See also APPEALS; ATTORNEYS; EXAMINATIONS (Special); FEE; JURISDICTION.

NURSES.

Where there is no written contract between a nurse and the Government, nor record of service as such nurse, satisfactory and competent evidence by the commanding officer of the post, brigade, division, or department, or by a surgeon, assistant surgeon, or hospital steward in charge of or employed in such hospital, that the claimant actually served and acted in the capacity of nurse for a period of six months in any regimental, post, camp, or general hospital, which service was accepted by the officer or person lawfully in charge of such hospital, shall be deemed sufficient evidence that she was properly employed, as contemplated by the act of August 5, 1892. The services of such officer, surgeon, assistant surgeon, or hospital steward must be verified by the records of the War Department. Such nurse shall be considered as having been honorably relieved from the service (where the record does not show the contrary) when she ceased to act in said capacity in said hospital. *Commissioner of Pensions* (Asst. Sec. Bussey), 6 P. D., 283.

Modified: 7 P. D., 8.

Under the act of August 5, 1882, a claimant must show, unless employed directly by authority of the Surgeon-General of the Army, that the person who employed her had proper authority, and this authority must be recognized by the War Department. Any person having actual knowledge is competent to testify as to the fact and circumstances of the employment. Those women who specially superintended and prepared the diet of the sick and wounded in hospitals under the direction of those in charge, and where such superintendence required the information and skill of a dietitian or nurse rather than that of an ordinary kitchen employee, are pensionable under this act. Departmental decision and ruling of February 24, 1893 (6 P. D., 283), modified. *Commissioner of Pensions* (Asst. Sec. Reynolds), 7 P. D., 8.

The act of August 5, 1892, bestows a pension status, as far as service is concerned, upon those "women who rendered actual service as nurses, in attendance upon the sick or wounded, in any regimental, post, camp, or general hospital of the armies of the United States, for a period of six months," provided such women were employed by the Surgeon-General of the United States; and failing to show employment by said Surgeon-General, they must show employment by "authority which is recognized by the War Department." *Marcia Miles* (Asst. Sec. Reynolds), 8 P. D., —.

OATHS.

See ALLEGIANCE; ATTORNEYS; BOUNTY LAND; NOTARY PUBLIC.

OBESITY.

See DISABILITY; INCREASE; SEQUENCE.

OBSCURE DISEASE.

See EVIDENCE.

OFFICER.

See NOTARY PUBLIC; RANK.

OLD WARS.

See BOUNTY LAND; SERVICE.

OPERATION OF LAW.

See INCREASE; RATING; REDUCTION.

ORDERS OF COMMISSIONER.

See DISABILITY; ORDERS; RATING.

ORDERS.

1. No. 144.

See FEE CONTRACT, 10.

2. No. 164.

See RATING, 10.

3. No. 174.

See ATTORNEYS, 15.

4. No. 184.

See RATING, 2 (*d*).

5. No. 192.

See EVIDENCE, 32.

6. No. 222.

See NONRESIDENTS.

7. No. 229.

See EVIDENCE, 3; PRACTICE, 2.

OREGON ROUTE.

See BOUNTY LAND (Service).

ORIGIN OF DISABILITY.

1. Generally.
2. Aggravation and recurrence of old disability.
3. After muster out.
4. Evidence of.
 - (a) *Certificate of disability.*
 - (b) *Disease manifested prior to furlough.*
 - (c) *Fraud.*
 - (d) *Prior soundness being established.*
 - (e) *Prima facie case.*
 - (f) *Sequence.*
5. Predisposition to disease.
6. Vicious habits.

1. Generally.

This soldier enlisted March 1, 1847, marched to the seat of war, and was discharged October 6 following. He must have passed the usual examination at the time of his enlistment, and met with the approval of the examining officer. The claim under the act of February 11, 1849 (1847), should, therefore, be allowed. *Charles Johnson* (Sec. Ewing), 1 L. B. P., 46.

A disability arising prior to March 4, 1861, is pensionable only under laws existing prior to July 14, 1862; and a disability arising subsequent to March 4, 1861, is pensionable under the act of July 14, 1862, whether the cause of the disability originated prior or subsequent to March 4, 1861. *Instructions* (Sec. C. B. Smith), 5 L. B. P., 106.

No fact being established serving to directly connect the alleged disabilities with any cause that either originated in or was due to the service and line of duty, claim must be rejected. *Michael Cassidy* (Asst. Sec. Hawkins), 2 P. D., 379.

The cause of disability, to entitle to pension, must in some manner pertain to and have a natural and logical connection with the military service and line of duty. Citing William Ammerman, 1 P. D., 5; William Jones, *ibid.*, 87; Carroll M. Wagoner, *ibid.*, 338; Jesse M. Stillwell, 2 P. D., 83; Alexander Gillespie, *ibid.*, 16. *Henry A. Helmer* (Asst. Sec. Hawkins), 2 P. D., 385.

2. Aggravation and recurrence of old disability.

Title to pension does not exist where the proof shows that the disability was, no doubt, accelerated by exposure while in the service, but did not originate therein. *Jacob Prince* (Sec. Schurz), 7 P. D. (o. s.), 121.

Where it appears that prior to enlistment claimant had a disease which may have created a predisposition to the recurrence of the same, rendering his system more liable than otherwise to a second attack from exposure or unusual hardship, and yet where it appears that there had been, prior to enlistment, a complete recovery from the first attack, and the circumstances necessary to produce the disease, or a recurrence of the same, are due to the performance of claimant's duty as a soldier and were legitimately incidental to the service, it is held that the recurring disability is pensionable under the law. *Joseph M. Potter* (Asst. Sec. Bussey), 3 P. D., 82.

Where a disability which originated prior to enlistment, but was apparently cured prior to and at the date of enlistment, is revived and aggravated as the immediate result of accident in the line of duty, the injurious consequences of such aggravation may be pensionable under a liberal construction of the law. *Rudolph M. Montgomery* (Asst. Sec. Bussey), 3 P. D., 41; *John M. Chandler* (Asst. Sec. Bussey), 4 P. D., 276.

It has been uniformly held by the Department that the mere aggravation in the service of a disease existing prior to enlistment is not pensionable, whether any part of the disability in this case (from deafness) is due to the service being not susceptible of proof. Distinguishing this case from *Joseph M. Potter*, 3 P. D., 82, in that a complete recovery prior to enlistment was shown in that case, while in this the disease was progressive from its inception. *George H. Stakes* (Asst. Sec. Bussey), 4 P. D., 158.

The evidence indicating that this claimant's disability was due primarily, if not entirely, to a cut received prior to enlistment, producing a deformity of the foot, and not, as alleged, to forced marching, rejection is affirmed, under *Rudolph M. Montgomery*, 3 P. D., 41, and *Jesse Lovel*, *ibid.*, 187. *John M. Chandler* (Asst. Sec. Bussey), 4 P. D., 276.

Even if a disability arising in service be a recurrence of an old anteservice trouble, from which the soldier had apparently recovered at enlistment, the recurrence after twelve months' continuous service would give such soldier a pensionable status, if shown to be due to line of duty in the service. *Daniel Daily* (Asst. Sec. Bussey), 4 P. D., 337.

2. Aggravation and recurrence of old disability—Continued.

Where a disability which originated prior to enlistment, but was apparently cured prior to and at the date of enlistment, is revived and aggravated as the immediate result of an accident or of an incident in the line of duty, the injurious consequences of such aggravation may be pensionable under a liberal construction of the law. *James Shaffer* (Asst. Sec. Bussey), 5 P. D., 6.

When a disabling cause which originated prior to enlistment, but was apparently cured prior to that date, is alleged to have been revived and aggravated as the immediate result of some accident or incident in the service and line of duty, before the disability resulting therefrom will be accepted as due to such service it will be necessary to establish some injury resulting from or incurred in the service and line of duty, or other cause sufficient to produce a recurrence of the said disability, without which, presumably, the recurrence would not have happened, and not merely the natural aggravation of an already existing disability. *Stephen Horton* (Asst. Sec. Reynolds), 7 P. D., 369.

3. After muster out.

Soldier was mustered out June 16 and subsequently paid to include June 28, 1865. He was killed June 29, 1865: *Held*, That death cause did not originate in service. *Mother of John Clark, alias William Barnard* (Asst. Sec. Bussey), 6 P. D., 254.

4. Evidence of.

There being no record, medical, or other evidence showing any cause originating in service to produce the insanity during which the soldier took poison with suicidal intent, and died from its effects, rejection of his widow's claim is affirmed. *Ann Gallagher* (Asst. Sec. Hawkins), 2 P. D., 332.

(a) Certificate of disability.

Where soldier was discharged upon certificate of disability signed by the surgeon of his regiment and the captain of his company, stating that the disability for which he was discharged and for which he claims a pension existed prior to enlistment, the rejection of the claim was proper. *Francis Bannick* (Sec. Schurz), 7 P. D. (o. s.), 108.

An officer who accompanied his letter of resignation from service with a surgeon's certificate of disability, in which it is stated that the disability mentioned therein was contracted prior to his enlistment, is bound by such statement, but is pensionable on proof of disability actually due to service. *Isaac T. Ralston* (Actg. Sec. Joslyn), 13 P. D. (o. s.), 434.

4. Evidence of—Continued.**(b) Disease manifested prior to furlough.**

Where a disease manifests itself the day before or on the day furlough was granted, it is just to presume it originated in and was due to the service. *Mary Sloan* (Asst. Sec. Bussey), 4 P. D., 295.

See also EVIDENCE, 35 (e).

(c) Fraud.

Held, on the allegations and evidence, that claim as to service origin of disabilities is so preposterous and improbable as to justify the suspicion that, to some extent at least, it is deliberately fraudulent. *Richard Milliner* (Asst. Sec. Hawkins), 2 P. D., 112.

(d) Prior soundness being established.

The fact of soundness prior to enlistment being established, and it being shown also, by credible evidence, both lay and medical, that upon his discharge from the service and return home the soldier was suffering with chronic diarrhea, and much disabled by said disease, the origin of the same in the service and line of duty will be accepted as the basis of pension. *Eri Warner* (Asst. Sec. Bussey), 5 P. D., 114.

See also EVIDENCE, 35 (e).

(e) Prima facie case.

The evidence in this claim making a prima facie case as to service origin of alleged injury to hip, knee, side, and arm, claim should be allowed, notwithstanding claimant had a fever sore on his leg prior to service, the latter disability being capable of elimination, in part, in considering his disabilities. *Warren O'Haver* (Asst. Sec. Bussey), 4 P. D., 207.

(f) Sequence.

Pension being claimed on account of paralysis and disease of nervous system, alleged as due to malarial fever incurred while on a certain raid in service, it is held that, on the evidence, claim should be allowed, although a direct medical sequence of paralysis (and disease of nervous system) and malarial fever be not shown, and although age is a factor in producing the disability, it appearing that the present disability is most probably due to exposure and hardship while on said raid. *Robert S. Huey* (Asst. Sec. Bussey), 4 P. D., 180.

See also SEQUENCE.

5. Predisposition to disease.

Claimant was discharged one year after enlistment for mental imbecility with symptoms of insanity, existing prior to enlistment. The rejection of his claim for pension for insanity

5. Predisposition to disease—Continued.

is reversed, on the ground that the evidence, though showing a predisposition to insanity, shows that the insanity did not develop until after enlistment, and preexisting mental weakness is no bar to pension. *Bernard Bruner* (Asst. Sec. Bussey), 3 P. D., 228.

If there was no disease or disability existing at the time of this soldier's second enlistment, but disease developed afterwards within the service, he should not be denied his right to pension, even though some predisposition to the disease existed which might not have developed, or did not in fact develop, until brought on by the service. *Jonathan M. Rich* (Asst. Sec. Bussey), 4 P. D., 371.

See also DEATH CAUSE, 8.

6. Vicious habits.

If the loss of health should have proceeded from careless or irregular habits in the party, much more if from vicious ones, or if he brought to the service or ranks of his country a constitution already impaired or rankling with the germs of maladies that afterwards do nothing more than ripen into activity, these will form occasions for caution, or for entire exclusion from the bounty, when the executive duty comes to be performed in the way Congress has pointed out (in the act of March 16, 1802). *Atty. Gen. Rush*, 1 Op., 181.

It being shown that for a year or more prior to his death, from softening of the brain, the soldier was exceedingly intemperate, if not a confirmed drunkard, his death is not chargeable to his service, and his widow is not pensionable. *Abby A. Johnson* (Sec. Delano), 2 P. D. (o. s.), 462.

There being no record or medical evidence as to service origin of alleged disease of eyes, and an adequate cause, due to the claimant's vicious habits, being shown to have existed prior to enlistment, it is *held* that the evidence fails to show said disease of eyes originated in the service and line of duty. *Henry King* (Asst. Sec. Bussey), 6 P. D., 272.

See also DEATH CAUSE; EVIDENCE; NEW DISABILITY; SEQUENCE; SERVICE; VICIOUS HABITS.

ORPHAN BROTHERS AND SISTERS.

See HALF-BREED; LIMITATION.

OVERPAYMENTS.

See PAYMENTS; REIMBURSEMENTS.

PARTNERSHIP.**Surviving partner may complete claim.**

Where a firm of attorneys has been prosecuting a claim for pension, and before the completion of the claim one of said attorneys dies, the surviving partner will not be required to obtain a new power of attorney in his own behalf to entitle him to recognition in such claim, but he will be allowed to complete the same in the name of the firm. *Instructions to Commissioner of Pensions* (Asst. Sec. Reynolds), 7 P. D., 281.

See also ATTORNEYS.

PATENTS.

See BOUNTY LAND.

PATHOLOGICAL SEQUENCE.

See DEATH CAUSE; SEQUENCE.

PATRIOT WAR.

See BOUNTY LAND (Service); SERVICE.

PAY AND PENSION.

1. When entitled to both pay and pension.
2. Minister at Constantinople entitled to both.
3. General Pleasanton not entitled to both under special act.

1. When entitled to both pay and pension.

An officer who, having lost a limb in the war of 1812, was mustered out of the service upon a captain's pension, and afterwards appointed battalion paymaster, may be regarded as having been appointed to the civil branch of the service within the meaning of the act of April 30, 1844, chapter 15, and entitled to receive both his pension and his pay. *Atty. Gen. Toucey*, 5 Op., 51.

The third proviso of the act of April 30, 1844, chapter 15, declaring that "no person in the Army, Navy, or Marine Corps shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service," is not repealed by the fifth and thirteenth sections of the act of July 14, 1862, chapter 166. *Atty. Gen. Williams*, 14 Op., 94.

1. When entitled to both pay and pension—Continued.

Pension should not be granted to anyone, nor the name continued on pension roll of any person, in general service unless there be clear and satisfactory proof that such person is disabled and that his disability is such as to occasion his employment in a lower grade or in some civil branch of the service. *Instructions in re William Mulhall* (Sec. Delano), 8 L. B. P., 451.

See also *John Pulford*, RETIRED OFFICERS, 4.

2. Minister at Constantinople entitled to both.

Commodore Porter, who is borne on the Navy pension roll at \$40 per month, is entitled both to his pension and his regular pay as minister at Constantinople. The case of the minister does not fall within the second section of the act of August 16, 1841, chapter 8, which seems confined to persons in the naval service. *Atty. Gen. Legare*, 4 Op., 39.

3. General Pleasanton not entitled to both under special act.

Claimant's name having been placed on the retired list of the Army by virtue of a special act (October 19, 1888), which provided that from and after its passage "no pension shall be paid to said Alfred Pleasanton," he has no title to either an invalid pension nor to a service pension under the act of January 29, 1887. *Alfred Pleasanton* (Asst. Sec. Bussey), 3 P. D., 177.

See also DESERTION; PENSION.

PAYMENT OF PENSION.**1. To whom made.**

- (a) *In case of imprisoned pensioner.*
- (b) *To inmates of Soldiers' Home.*
- (c) *In case of minors.*

2. Fraudulent impersonation of pensioner.**3. On forged indorsement.****4. From what fund paid under special act.****5. Misappropriation by attorney.****6. On order of Commissioner in lieu of new certificate.****1. To whom made.**

Payment of pension should not be made to any person other than the pensioner or his duly constituted attorney. *Alfred H. Whitford* (Sec. Cox), 7 L. B. P., 209.

Payment of pension to the guardian of a person under legal disability is not obligatory, and if the Commissioner of Pensions shall be satisfied that the pensioner's interests would be better subserved by payment to the pensioner himself he may so direct. *Edward W. Moore* (Asst. Sec. Reynolds), 8 P. D., —.

1. To whom made—Continued.**(a) In case of imprisoned pensioner.**

Payment under authority of the act of Congress approved August 8, 1882 (now amended section 4766, Revised Statutes), to a wife or to the guardian of minor children of an invalid pensioner who is in penal confinement for violation of the laws is not such a payment as requires the possession or production of a certificate by the beneficiary; and payment may be made to such widow or guardian upon his or her properly executed voucher showing that the invalid pensioner is alive and in penal confinement, and that she or minor child is dependent upon him. *Edward Willson* (Asst. Sec. Reynolds), 8 P. D., 87.

(b) To inmates of Soldiers' Home.

While a pensioner is an inmate of a Soldiers' National Home, although he may be absent without leave, his pension should be paid to the treasurer of the institution. *Milton L. Woodworth* (Sec. Kirkwood), 8 P. D. (o. s.), 158.

Assignments of pension certificate to National Soldiers' Home only authorize payment for the time soldier was an inmate thereof. *Atty. Gen. Devens*, 16 Op., 374.

(c) In case of minor's pension.

There is no authority of law for the division of a pension or allowance of a pro rata share of pension, in the case of two or more minors who are jointly entitled thereto, to either of them. *Minors of Joseph Seibold* (Sec. Delano), 8 L. B. P., 395.

2. Fraudulent impersonation of pensioner.

The fact that pension was paid to one who fraudulently impersonated the pensioner, who had left his pension certificate in the custody of such person on leaving the city, and had been unable to recover it after several requests, does not bar payment to the pensioner for the time his pension was thus wrongfully retained by the other. *William Ross* (Sec. Teller), 14 P. D. (o. s.), 154.

3. On forged indorsement.

Where a pension agent draws a check on the United States Treasurer to the order of the pensioner, and mails it to the address of the latter, it is a payment of the pension within section 4765, Revised Statutes; and sections 4766 and 4770, Revised Statutes, have no application to a case where payment of a check so issued was made on a forged indorsement thereon of such pensioner's name, but the question of the liability of the drawee in making such payment is not for this

3. On forged indorsement—Continued.

Department to decide. However, the banks to whom the money was paid are probably liable to refund the same. *Diana Haskell and Alexander Neff* (Sec. Chandler), 3 P. D. (o. s.), 205.

4. From what fund paid under special act.

Payments of Revolutionary war pensions allowed by special acts, which make no specific appropriation for payment of such allowance, may be made out of the general appropriation for Revolutionary pensions for the current year in which allowed. *Atty. Gen. Berrien*, 2 Op., 343.

5. Misappropriation by attorney.

Where a pension check was sent by direction of the beneficiary to her attorney, the Government is not liable for the misappropriation by said attorney of the proceeds of such check. *Ellen Pettit* (Asst. Sec. Hawkins), 2 P. D., 205.

6. On order of Commissioner in lieu of new certificate.

An order made by the Commissioner of Pensions, being within his general jurisdiction, and certified to the pension agent instead of a new certificate, is obligatory on the pension agent. *Edward Willson* (Asst. Sec. Reynolds), 8 P. D., 87.

See also GUARDIANS; NONRESIDENTS; RETIRED OFFICERS.

PAYMENTS.

See ACCRUED PENSION; ARREARS; GUARDIANS; MINORS; NONRESIDENTS; REDUCTION; SUSPENSION.

PAY CLERK OR PAYMASTER'S CLERK.

See SERVICE, 18.

PAYMASTERS.

See SERVICE, 11.

PEACE, TIME OF.

See TITLE; WIDOW.

PENAL STATUTES.

Construction of.

The act of August 7, 1882, providing that the open and notorious adulterous cohabitation of a widow, who is a pensioner, shall operate to terminate her pension is akin to a penal statute, and as such its terms must be literally enforced. *Sarah E. West* (Asst. Sec. Bussey), 3 P. D., 115.

Overruled: 7 P. D., 207.

PENDING CLAIM

The Attorney-General of the United States has decided that the signing of the certificate by the Secretary of the Interior is essential to the establishment of the pension. (No particular decision by the Attorney-General is cited.) *Jesse, heir of Susan McCoy* (Sec. Cox), 7 L. B. P., 12.

A claim must be regarded as pending within the meaning of section 4698½, Revised Statutes, until it is definitively and affirmatively acted upon by the Pension Office. *Bernard Augustin* (Actg. Sec. Cowen), 3 P. D. (o. s.), 58.

The pensioner having died, the widow, although she has no right to set up any new claim on behalf of the husband, may apply for the correction of an error in the adjudication of a claim made by the husband during his lifetime. She has the same right that he would have if living. *Isaac S. Warmoth* (Asst. Sec. Bussey), 3 P. D., 324.

See also ACCRUED PENSION; DECLARATIONS.

PENSION.

1. Is a gratuity, not a claim or account.
2. Is in no sense compensation, pay, or salary.
3. Allowance to seamen not a.
4. Half pay is a.
5. Continuance of, to a dependent father.

1. Is a gratuity, not a claim or account.

Pensions are gratuities, not claims or accounts, within the meaning of the statute; yet when these are once placed on the pension roll they become claims to semiannual payments, which, if not asserted within six years, can not be audited without the authority of Congress. *Atty. Gen. Mason*, 4 Op., 366.

Pensions are not claims or accounts, but gratuities, and are not subject to the laws governing the former, nor within the rule established by Chief Justice Marshall in *ex parte Randolph*, 2 Brock., 447. *Catherine Harris* (Sec. Delano), 2 P. D. (o. s.), 256.

Pension is a gratuity, not a debt, and claims for are to be settled according to the law in force at the time of adjudication. *Adrian Marseilles* (Sec. Schurz), 4 P. D. (o. s.), 337.

A pension is a gratuity, intended as an aid to those who incurred disabilities arising either from disease or from wounds that were due to the service and line of duty. *W. H. Brokenshaw* (Asst. Sec. Hawkins), 1 P. D., 194.

2. Is in no sense compensation, pay, or salary.

Pension is in no sense "compensation," "pay," or "salary," nor is a pensioner who is wrongfully receiving pension a "delinquent," nor such pension received a "balance due," nor arrears of such pension "arrears," within the meaning of section 4716, Revised Statutes, and neither said section nor section 4734, Revised Statutes, has any application to such pension. *Cyrus Pike* (Asst. Sec. Hawkins), 2 P. D., 65.

3. Allowance to seamen not a.

An allowance made to a seaman under the act of March 2, 1867, is not a "pension" within the meaning of section 4715, Revised Statutes, and may be received in addition to pension under the general law or under the act of June 27, 1890, but can not, in such case, exceed one-fourth the amount of the pension. *John Spencer* (Asst. Sec. Bussey), 6 P. D., 167.

Overruled in part: s. c. following.

The allowances granted by section 4756 and 4757, Revised Statutes, are "pensions;" but they may be received at the rates provided in said sections, notwithstanding the provisions of section 4715, Revised Statutes, or of the act of June 27, 1890, as to double pension. Overruling in part the former decision, 6 P. D., 167. s. c. (Asst. Sec. Reynolds), 7 P. D., 152.

(In a note to this decision as published it is stated the Assistant Attorney-General for the Interior Department submitted, on January 29, 1894, an opinion relative to non-resident aliens under the provisions of the act of March 1, 1893 (27 Stat. 523), in which he held that an "allowance" under section 4756, Revised Statutes, is a "pension" within the meaning of said act.)

4. Half pay is a.

The half pay allowed under antebellum laws is, to all intents and purposes, "pension." *Minor of Bernhard Barr* (Sec. Browning), 6 L. B. P., 441.

5. Continuance of, to a dependent father.

Pension to a dependent father can not be paid except during such period as the evidence may show it to be actually necessary as a means of adequate subsistence. *David Rees* (Asst. Sec. Muldrow), 2 P. D., 307.

See also ACCRUED PENSION; COMMENCEMENT; NAVY PENSIONS; RETIRED OFFICER.

PENSION AGENTS.**Bonds of**

As a rule, the bond of a pension agent should not be changed during his tenure of office, but changes may be permitted. *Instructions in re R. M. Kelly, pension agent* (Sec. Delano), 9 L. B. P., 408.

See also REIMBURSEMENT (Overpayments).

PENSION CHECK

The receipt by a pensioner of a check for the amount due him on his pension, which was indorsed but not transferred by him in his lifetime, is not payment. The amount so due is accordingly "accrued pension," and is payable to those only who are entitled thereto under such section. *Atty. Gen. Garland*, 19 Op., 1.

PENSION MONEY.

When pension money gets safely into a pensioner's hands, the law exerts no further control over it, nor over pensioner's use of it and if the same be employed in purchasing real estate or other taxable property the investment would stand on precisely the same footing as other property of a similar character, and would be subject to seizure and sale, and to be taxed. *Communication to L. R. Smith* (Asst. Sec. Bussey), 5 P. D., 120.

PERMANENT SPECIFIC DISABILITY.

See DISABILITY.

PERSONAL REPRESENTATIVES.

See CONSTRUCTION OF LAWS.

PHYSICIANS.

See CERTIFICATES (Of Examination); EVIDENCE; MEDICAL REFEREE.

PLATTSBURG.

See BOUNTY LAND (Service).

POST.

In general language, a "post" is any place where an officer or soldier is posted, i. e., stationed on duty; while "fort" and "garrison" have a more limited significance, the latter being the station of an organized body of troops, or that body itself. *Martha M. Frisby* (Asst. Sec. Bussey), 3 P. D., 344.

See also MILITARY POST.

POSTMASTER.

See DISLOYALTY; NOTARY PUBLIC.

POWER OF ATTORNEY.

See ATTORNEYS; FEE CONTRACT; INSANE PERSONS.

POWELL'S BATTALION.

See COMMENCEMENT; SERVICE.

PRACTICE.

1. Act of June 27, 1890.
2. Affidavits under Order 339.
3. Attorneys—information to.
4. Laws governing.
5. Medical division.
6. Refusal to comply with order for medical examination.
7. Regulation by the Executive.
8. Requirements as to evidence.
9. Rule 2.
10. Reopening claim.
11. War Department records.
12. Defective declarations.
13. Appeals.
14. Adjudicating officers.
15. No ratable disability, what covers.

1. Act of June 27, 1890.

Where, at the date of the passage of the act of June 27, 1890, a person had a claim pending in the Bureau of Pensions, the evidence filed in said claim may be considered under an application filed under said act asking that such evidence be so considered, although the pension allowed under said act may commence only from the date of filing such application thereunder. *Samuel Dunham* (Asst. Sec. Bussey), 4 P. D., 99.

No claim rejected under the second section of the act of June 27, 1890, will be reopened except on an affidavit of the claimant alleging that a pensionable disability existed at the date of filing the application, supported by evidence tending to prove said allegation. *Timothy L. Carley* (Asst. Sec. Reynolds) 7 P. D., 12.

Where a claim has been rejected and subsequently evidence is filed, tending to show fraud on the part of the examining surgeons, or that a first examination was lacking in thoroughness or competency, or that certain disabling causes were overlooked or ignored, and it is shown to the satisfaction of the Commissioner of Pensions, either by testimony, or a second medical examination, that the causes and pensionable condition did exist at the date of filing the original declaration, rejection should be set aside and pension be made to commence from that date. *Charles J. Bryant* (Asst. Sec. Reynolds), 7 P. D., 299.

2. Affidavits under Order 229.

The statement of the affiant, in an affidavit, that his testimony therein was written or prepared for typewriting (as the case may be) in his presence and from his oral declarations then made and giving the time when, place where, and name of person to whom such declaration was made, and that he did not use and was not aided or prompted by any written or printed statements or recitals prepared or dictated by any other person and not attached as an exhibit to his testimony, must, under order 229, be written and may not be printed. *Jacob Van Marter* (Asst. Sec. Reynolds), 8 P. D., 26.

3. Attorneys—information to.

It is within the discretion of the Commissioner of Pensions to decline to indicate to an attorney wherein certain evidence filed fails to establish the fact intended. The attorney has the right of appeal when the record is complete. *William E. Seavy* (Asst. Sec. Reynolds), 8 P. D., 61.

4. Laws governing.

The laws in force at the time of the adjudication of a claim must determine the rights of the applicant. *Rowland A. Colby* (Sec. Delano), 1 P. D. (o. s.), 89.

See COMMENCEMENT.

5. Medical division.

In view of the legal establishment of the Medical division, it is suggested that a general order be issued forbidding the adjudication of a claim for invalid pension wherein a medical question is involved unless such claim has been examined and its merits and demerits passed upon by said division. *James F. Godfrey* (Sec. Delano), 1 P. D. (o. s.), 111.

When new medical evidence is submitted with a view to reopening a rejected claim, it is the practice of the Bureau of Pensions to submit the same to the medical referee before refusing to reopen, which said practice is approved; and where, in such a case, a former rejection has been adhered to on medical grounds without submitting such medical evidence to the medical referee, it is error. *Tolliver Thompson* (Asst. Sec. Reynolds), 8 P. D., —.

See also MEDICAL REFEREE.

6. Refusal to comply with order for medical examination.

Refusal to comply with order for medical examination is sufficient ground for rejection of claim. *William Casey* (Sec. Chandler), 3 P. D. (o. s.), 270.

7. Regulations by the Executive.

Granting of pensions under the act of January 11, 1812, is governed by the President's regulations made under the act of March 16, 1802, and where such regulations do not embrace persons holding civil office, such persons have no absolute legal right to pension under said act, and none may be allowed them thereunder. *Atty. Gen. Taney*, 2 Op., 519.

8. Requirements as to evidence.

Requirements should all be made at one time, and not consecutively, as soon as practicable after the claim be filed. *Joseph Cogger* (Actg. Sec. Cowen), 2 P. D. (o. s.), 32.

9. Rule 2.

There having been no denial by the Bureau of Pensions of any right asserted or existing in this case, and the appeal failing to meet the requirements of rule 2 of Department Rules of Practice, it is therefore dismissed. *Fatima Crawford* (Asst. Sec. Reynolds), 7 P. D., 357.

See also APPEALS.

10. Reopening claim.

The deceased soldier's invalid claim having been reopened for consideration on its merits, the widow's claim rejected on the ground that soldier's death was not shown to be due to the service should also be reopened for further adjudication on the evidence that may hereafter be adduced in both claims. *Andrew Watts* (Asst. Sec. Reynolds), 8 P. D., —.

11. War Department records.

The record in evidence from the War Department shows claimant accepted into the service by proper authority on December 20, 1864. He was discharged April 13, 1865, and the Treasury record shows him paid as a private up to that date. The War Department now states that it has determined that soldier was in the service from December 20, 1864, to February 2, 1865, but it produces no record or evidence corroborative of that conclusion: *Held*, A claim can not be adjudicated upon alleged facts not in evidence, and the War Department should be requested to file a record of service de novo, inasmuch as its later conclusions are totally at variance with the record found in the case and filed by said Department. *David H. Dyer* (Asst. Sec. Reynolds), 8 P. D., —.

12. Defective declarations.

The action of the Commissioner in returning a declaration which omits a material averment is not error. *Robina Weatherwax* (Asst. Sec. Reynolds), 8 P. D., —.

13. Appeals.

Where, on appeal, the action of the Commissioner of Pensions is reversed and the claim remanded for special examination, the mission of the appeal is fulfilled; and when such examination has been completed the claim should be adjudicated in the Pension Bureau, and will not again be considered by the Department until an appeal shall have been taken from such final adjudication by the Commissioner. *Marion Brock* (Asst. Sec. Reynolds), 8 P. D., —.

See also APPEALS.

14. Adjudicating officers.

In adjudicating a widow's claim under the general law the legal reviewer should state from what disabling causes, if any, soldier suffered which are accepted as due to his military service; and the question as to whether the death cause had any pathological connection therewith should be submitted to the medical referee. The statement by the legal reviewer that "the cause of soldier's death can not be traced to his military service" can not be accepted as a proper adjudication of the claim. *Lydia A. Green* (Asst. Sec. Reynolds), 8 P. D., —.

15. No ratable disability, covers what.

The words "no ratable degree of disability shown," occurring in a rejection of a claim, cover all disabling causes that are the result of an alleged disability. *John C. Mohrstadt* (Asst. Sec. Reynolds), 8 P. D., —.

See also COMMENCEMENT; EVIDENCE (Affidavits—order 229); EXAMINATIONS; FACE BRIEF; INCREASE; MILITIA; RATING; REBATING; RESTORATION.

PREDISPOSITION TO DISEASE.

See ORIGIN.

PRESIDENT, THE.

See APPEALS; MILITIA.

PRESUMPTIONS.

See DISABILITY; EVIDENCE; RESTORATION.

PRIOR SOUNDNESS.

See EVIDENCE; ORIGIN.

PRIVATEERSMEN.**War of 1812.**

Privateersmen in the war of 1812 are not entitled to pension under the act of February 14, 1871, as they were not enlisted men or volunteers in the naval service. *William Booth* (Sec. Delano), 8 L. B. P., 400.

Privateersmen were not in the naval service of the United States within the meaning of the act of February 14, 1871, and are not, therefore, pensionable under said act. *William De Peyster* (Sec. Delano), 8 L. B. P., 465.

See also SERVICE.

PRIZE MONEY.

See BOUNTY LAND.

PROCLAMATION.**1. Emancipation.**

See DEPENDENT RELATIVES.

2. President's.

See BOUNTY LAND (Disloyalty); MILITIA.

PROFESSOR IN MILITARY ACADEMY.

See SERVICE.

PROOF.

See BOUNTY LAND; EVIDENCE.

PROSPECTIVE DISABILITY.

See INCREASE.

PROVOST-MARSHALS.

As deputy provost-marshals did not have the power to appoint assistant provost-marshals, service as such assistant does not entitle to pension. *John W. Reynolds* (Actg. Sec. Cowen), 1 P. D. (o. s.), 223.

Provost-marshals are pensionable only for wounds or injuries incurred in the discharge of duty, and not for disease contracted. *Isaac N. Phillips* (Asst. Sec. Bussey), 3 P. D., 377.

Service as a provost-marshal, deputy provost-marshal, or enrolling officer during the late War of the Rebellion, is not such military service as is contemplated by section 2 of the act of June 27, 1890; such persons having been employed in

2. President's—Continued.

the civil branch of the service, are not included within the terms of said section, and are not pensionable thereunder. *Andrew J. Shannon* (Asst. Sec. Reynolds), 7 P. D., 64.

See also SERVICE.

PURSER'S CLERK.

See SERVICE.

QUARTERMASTER'S DEPARTMENT.

See SERVICE; WAR VESSELS.

RAM FLEET.

See GUNBOAT.

RANK

1. A commission is not indispensable.
2. A vacancy must have existed.
 - (a) *Question of vacancy is determinable by War Department.*
3. Muster-in essential to confer rank.
4. State commission subsequent to discharge from United States service.
5. Officer, as used in act of January 29, 1897, construed.

1. A commission is not indispensable.

The question having been submitted to the Attorney-General, he is of the opinion that service in a military office, even although the commission may not be issued or may not date back to the commencement of the service, entitles the person to pension for such service. *Communication* (Sec. Cass), Pension Laws, etc. (1849), 98.

While an application by a person claiming to have acted as an officer without having received a commission should be received with caution, a commission is not indispensably necessary to invest a person with rank or command, or to entitle him to the emoluments of the office which he fills, but some act or instrument of writing tantamount to a commission, or promise of a commission is deemed essential; and it must in all cases be clearly shown such claimant was prevented from receiving such commission in consequence of peculiar circumstances over which he had no control. *Ruling* (Sec. Cass), Pension Laws, etc. (1849), 99.

The acts of Congress which confer pensions upon officers proportioned to the grades of the positions they held were intended to apply to those only who were regularly appointed to such offices by competent authority; and it is necessary to

1. A commission is not indispensable—Continued.

prove, not merely that a person performed service, but his legal right to perform such service; as was held by Secretary of War Cass, stating that, while it is not indispensably necessary in order to invest a person with rank that there be a commission, yet there must be some act or instrument in writing tantamount to a commission or a promise of a commission, and it must be shown that the person was prevented from receiving one by circumstances beyond his control. *Widow of William McClure* (Sec. C. B. Smith), 5 L. B. P., 24.

2. A vacancy must have existed.

If no vacancy exists no rank is conferred by a commission. *Mother of Michael Mullin* (Sec. Delano), 1 P. D. (o. s.), 494.

Rank is not conferred by a commission issued by the governor of a State, where it is shown that during the period between the date of the instrument and the date of the death of the soldier no vacancy existed in the office designated in said commission. *Elizabeth P. Hull* (Sec. Schurz), 5 P. D. (o. s.), 431.

In determining the question of pensionable rank under section 4696, Revised Statutes, as held in *Elizabeth P., widow of Abrathar Hull* (5 P. D., o. s., 431), if the organization for which a commission had been issued was so reduced in numbers that, under the regulations of the War Department, it was not entitled to an officer of the rank conferred by the commission, a vacancy did not exist in such rank within the meaning of the section. *William A. Thomas* (Sec. Teller), 9 P. D. (o. s.), 225.

(a) Question of vacancy is determinable by War Department.

Whether, in any case affected by section 4696, Revised Statutes, a vacancy existed in the rank conferred by a commission, is a question for decision by the officers of the War Department solely, and their report to the Pension Office that such vacancy did not exist must be accepted as conclusive on that point. *Cyrus Oakes* (Sec. Teller), 9 P. D. (o. s.), 437.

3. Muster-in essential to confer rank.

See RATING, 1 (e).

4. State commission subsequent to discharge.

Where an officer was mustered out and his organization disbanded and discharged from the service of the United States prior to his commission by the governor of his State to a higher rank, he is not pensionable as of such rank. *Elisha A. Hancock* (Sec. Teller), 14 P. D. (o. s.), 297.

5. Officer, as used in act of January 29, 1887, construed.

The word "officer" in the act of January 29, 1887, should be held to apply to those whose rank was recognized in the service by the rules, regulations, and customs in vogue at the time the service was rendered. *Richard H. Sinton* (Asst. Sec. Hawkins), 2 P. D., 320.

See also RATING, 1 (e); SPECIAL ACT.

RATING.**1. Generally—powers of commissioner.**

- (a) *Uniformity in rating.*
- (b) *Deformities.*
- (c) *Basis of rating—compounding rates and combining disabilities.*
- (d) *Certificates of examination, ratings in.*
- (e) *Rank, as affecting rating.*
- (f) *Minimum.*

2. Grades.

- (a) *First.*
- (b) *Second.*
- (c) *Third.*
- (d) *Intermediate.*

3. Equivalent disabilities—act of August 4, 1886.**4. Minor nonspecific disabilities.****5. Total disability—of hand.**

- (a) *Of arm.*
- (b) *Of foot.*

6. Particular disabilities—ankylosis of wrist.

- (a) *Deafness.*
- (b) *Eye, loss of, and loss of sight of.*
- (c) *Finger, loss of.*
- (d) *Hand and foot, loss of.*
- (e) *Hernia.*
- (f) *Leg, loss of one, and total disability of other.*

7. Arrears.**8. Ante-rebellion pension—special act.****9. Under act of July 27, 1868 (sections 13 and 15).****10. Under act of June 27, 1890—order 164.**

- (a) *Contra.*

11. Under special act.**12. Widow's pension.****13. Tables of rates.**

- (a) *Rates fixed by law.*
- (b) *Rates fixed by the Commissioner for disabilities not specified by law.*

1. Generally—powers of Commissioner.

The Commissioner of Pensions has the power, and it is his duty, to fix the rates for certain disabilities where the law fails to name such disabilities and to affix rates therefor. *Daniel Lauback* (Asst. Sec. Hawkins), 1 P. D., 318.

1. Generally—powers of Commissioner—Continued.

The Commissioner of Pensions is not bound by the opinion of the medical referee or the boards of examining surgeons. The final rating of a claim is not the act of the medical referee; it is the act of the Commissioner of Pensions, who bases his findings upon all the evidence in the case, using, as a means to that end, all of the various agencies placed at his disposal by law, potent among which are the facts and opinions of the boards of examining surgeons and the judgment of the medical referee after that official has reviewed the medical evidence as required by law. *Samuel Hook* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Uniformity in rating.

Similar disabilities should be rated uniformly. *Gottlieb Weaver* (Sec. Chandler), 2 P. D. (o. s.), 465.

(b) Deformities.

Deformity should be taken into consideration in rating an invalid pension. *John McGouisk* (Sec. Chandler), 3 P. D. (o. s.), 402.

See also SUBTITLE 6 (b).

(c) Basis of rating—compounding rates and combining disabilities.

Unless specifically provided for, there is no provision of law by which disabilities can be considered separately and compounded so as to allow for all the pension which each, considered separately, would aggregate. *Abram McCullum* (Actg. Sec. Bell), 6 P. D. (o. s.), 111.

Where pension was allowed at the rate shown as proper for wound alone, the factor of disease not being considered, both the wound and disease should be considered and the claim readjusted to embrace both disabilities. *Henry McDonough* (Sec. Schurz), 6 P. D. (o. s.), 475.

Claimant was pensioned at the rate of \$45 per month for the loss of a leg above the knee, and claims, also, for the loss of an eye, contending that he is entitled to \$63 per month for the combined disabilities. There is no intermediate rate between \$45 and \$50, nor between \$50 and \$72, and the law does not allow the compounding of ratings for specific disabilities, thereby creating a special rate for a special disability; and to entitle claimant to a higher rate than \$45 per month, it must be shown that the combined disabilities have resulted in permanent total helplessness, requiring the personal aid and attendance of another person. *Michael Kelley* (Asst. Sec. Bussey), 3 P. D., 240.

1. Generally—Continued.**(c) Basis of rating—compounding rates and combining disabilities—Cont'd.**

The act of August 4, 1886, does not provide a rate for any combination of disabilities. *Theodore De Tar* (Asst. Sec. Bussey), 4 P. D., 130.

The practice of the Department in determining pensionable ratings is governed not by a combination of separate ratings for separate disabilities, but by the sum total of the disability for manual labor, as ascertained by the medical division of the Bureau of Pensions. *Albert Marshall* (Asst. Sec. Bussey), 5 P. D., 226.

The pension laws give no authority for combining the rates for two or more causes of disability, so as to make an aggregated rate, except in cases of certain specific rates granted for certain conditions defined in the law itself. *Hiram H. G. Bradt* (Asst. Sec. Bussey), 5 P. D., 282.

(d) Certificates of examination, ratings in.

The certificate of a regular examining surgeon of the Pension Office should as a general rule, in the absence of any opposing proof, determine the rate of allowance, unless a mistake has been evidently made or there is ground to suspect collusion or fraud. *Henry Nolte* (Sec. Browning), 6 L. B. P., 344.

The office should not be governed so much by the rating made in figures by the examining surgeon as by his description of the disabilities found to exist. *Irring W. Billings* (Sec. Schurz), 6 P. D. (o. s.), 193.

In fixing rates of pension the reports of examining surgeons are not to be invariably followed to the letter, even though proven by other evidence to be erroneous, but such is the general rule, and, other things being equal, such reports should be given preference over the testimony of civil surgeons, and such rating made as all the evidence in the case may warrant. Explaining the rule in *John H. Lunderville*, 3 P. D., 209. *Charles A. Glasgow* (Asst. Sec. Bussey), 4 P. D., 348.

The rates recommended by examining surgeons in their certificates of examination are merely indicative of their own professional opinions as to the severity of the disability resulting from each disease or injury described by them, but have no binding force until approved by the Commissioner of Pensions. *George W. Blake* (Asst. Sec. Bussey), 5 P. D., 81.

The rates recommended by examining surgeons in their certificates of examination are merely indicative of their professional opinions as to the severity or character of the disability resulting from each disease or injury described by them, but

1. Generally—Continued.

(d) Certificates of examination, ratings in—Continued.

- having no binding force until approved by the Commissioner of Pensions. *Francis M. Varner* (Asst. Sec. Reynolds), 7 P. D., 161.

(e) Rank, as affecting rating.

If an applicant has served in different grades for a time sufficient to entitle him to pension, it must be graduated by the respective terms of service in each grade. (Act of June 7, 1832.) *Atty. Gen. Taney*, 2 Op., 539.

Rating of pension is governed by rank of soldier at the time his disability was contracted. *Adam C. Reinohl* (Sec. Harlan), 5 L. B. P., 272.

If there is no muster in as of a certain rank, for the reason that the command was not of sufficient strength, such rank can not be considered in rating. *Widow of Colonel Chantry* (Sec. Cox), 7 L. B. P., 68.

The rank to which a soldier was commissioned subsequent to the incurrence of the disability which caused his death can not be considered in rating his widow's pension, as it could not be considered in rating his pension, if he were living, on account of such disability. *Emily S. French* (Sec. Delano), 7 L. B. P., 372.

Reconsidered and adhered to by Actg. Sec. Cowen (8 L. B. P., 370), who held, also, that the public resolution No. 69, approved July 11, 1870, second section, does not relate to pensions or apply to this case.

Muster in to a rank under a commission is essential in order that such rank may be considered in rating on account of disabilities incurred while serving under such commission. *Mother of Robert D. Crosby* (Sec. Delano), 1 P. D. (o. s.), 1.

If a soldier is wounded, or contracts disease, but he recovers therefrom temporarily so as to resume duty, and a disability arises therefrom subsequently, the rank held by him at the time such disability actually arises governs in rating his pension. *Elizabeth McCluney* (Sec. Delano), 1 P. D. (o. s.), 84.

Where no vacancy existed in the rank to which an officer was commissioned, and he was consequently never mustered into that rank, such rank can not be considered in rating. *Mother of Michael Mullin* (Sec. Delano), 1 P. D. (o. s.), 491.

A civil engineer in the Navy had no defined rank prior to the President's order of February 24, 1881, but being, by reason of pay, most nearly assimilated in rank to a lieutenant, his pension should be rated the same as that of a lieutenant; but

1. Generally—Continued.

(c) Rank, as affecting rating—Continued.

since that order civil engineers have a defined rank, according to which pension should be rated. *Widow of Franklin A. Stratton* (Sec. Teller), 9 P. D. (o. s.), 261.

It being shown that the pensioned disability originated subsequent to the date the pensioner's commission as captain was issued and to the date when a vacancy existed in the rank of captain, such disability should be rated under section 4694, Revised Statutes, in accordance with the rank of captain. *Joshua Van Dervort* (Sec. Teller), 11 P. D. (o. s.), 25.

A brevet rank can not be taken into account in fixing the rate of an officer's pension. *Patrick Hart* (Asst. Sec. Hawkins), 1 P. D., 85.

A first engineer, not regularly mustered, serving on a gun-boat or war vessel, when pensioned under the second subdivision of section 4693, Revised Statutes, should be rated as of the rank of first assistant engineer in the naval service. *John G. Coney* (Asst. Sec. Bussey), 3 P. D., 394.

(f) Minimum.

Claimant appealed from the action of the Bureau fixing his rate of pension, and pending the appeal the medical referee, being requested for an opinion as to the adequacy of the rate, replied that, in accordance with an order of the Commissioner of Pensions, he was entitled to \$4 per month, said order declaring that \$4 should be the lowest rate allowed. It is held that said order of the Commissioner was error. *John H. Lunderville* (Asst. Sec. Bussey), 3 P. D., 209.

2. Grades.

A grade rate fixed and specified in the law is not, nor can it be, made by adding together the ratings for minor disabilities; nor is there an intermediate separate rate allowable between the several grade ratings. *Francis M. Williams* (Asst. Sec. Bussey), 3 P. D., 401.

Disabilities must be permanent in order to receive a grade rating; and the ratings for minor disabilities can not be added together in order to make a grade-rating. *Alexander Martin* (Asst. Sec. Bussey), 4 P. D., 378.

(a) First.

A person who has lost one leg and been totally and permanently disabled in the other comes within the provisions of section 4698, Revised Statutes, and is entitled to \$72 per month, under the act of June 16, 1880. *George F. McFarland* (Sec. Teller), 9 P. D. (o. s.), 258.

2. Grades—Continued.**(a) First—Continued.**

There is no general law authorizing more than \$50 per month for any pensioner unless he was receiving a pension of \$50 per month June 16, 1880, or unless he has lost both hands or both feet or the sight of both eyes. *Abram Duryee* (Asst. Sec. Bussey), 3 P. D., 276.

See also AID AND ATTENDANCE.

(b) Second.

Loss of use of arm by wound or injury does not entitle to \$24 per month. *George Fill* (Sec. Chandler), 4 P. D. (o. s.), 14.

Nonspecific disability, not incapacitating for the performance of manual labor, does not entitle to \$24 per month, second grade. *Stephen Golden* (Sec. Schurz), 4 P. D. (o. s.), 136.

Where party is receiving third-grade pension for wound of shoulder, not having lost arm above the elbow, the question is one of fact whether he is so disabled as to be incapacitated for performing any manual labor. *William Darnell* (Sec. Schurz), 6 P. D. (o. s.), 323.

Where party is receiving third-grade pension no increase can be allowed by compounding lesser disabilities unless those disabilities, in connection with that for which pensioned, are such as to preclude him from performing manual labor. *John M. Freed* (Sec. Schurz), 7 P. D. (o. s.), 7.

The rate of \$30 per month under the act of March 3, 1883, extends only to (1) loss of arm at or above the elbow; (2) loss of a leg at or above the knee, or (3) any other disability amounting to incapacity for the performance of any manual labor. A disability equivalent to the loss of an arm is not ratable at \$30 per month under said statute. *John S. Smith* (Asst. Sec. Hawkins), 1 P. D., 39.

A soldier in receipt of \$24 pension under the act of March 3, 1883, for loss of hand or foot, is not entitled to a higher rate because of disabilities from other causes unless the conjoined effect of all incapacitates him for the performance of any manual labor. *Augustus Annand* (Asst. Sec. Hawkins), 1 P. D., 126.

Under the act of March 3, 1883, a pensioner who, in addition to the loss of his leg, is otherwise "so disabled as to be incapacitated for performing any manual labor" is entitled to \$30 per month. *Charles W. Struble* (Asst. Sec. Hawkins), 2 P. D., 14.

The Department reasserts the ruling of Secretary Teller, made June 2, 1884, to the effect that "it would be proper to regard all pensioners whose disabilities are equivalent to that caused by the loss of an arm at the elbow or of a leg at or above

2. Grades—Continued.

(b) Second—Continued.

the knee as so disabled as to be incapacitated for performing any manual labor within the meaning of the act of March 3, 1883, and entitled from and after March 3, 1883, to the rate of \$30 per month." *Charles N. Smith* (Asst. Sec. Bussey), 3 P. D., 78.

Total disability to perform any manual labor is intended by the statute to mean not inability to perform the ordinary manual labor performed by day laborers, wherein muscular power, if not other elements of physical endurance, is required, but inability to perform any manual labor wherein the element of usefulness or profit or of capacity for earning subsistence is involved. *Andrew M. Luke* (Asst. Sec. Bussey), 3 P. D., 298.

(c) Third.

Soldiers who were granted a pension of \$24 per month under the clause in the act of March 3, 1883, reading "or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or a foot," are not entitled to have their pensions increased to \$30 under section 1 of act of August 4, 1886, which applies to those pensioners only who have lost one hand or one foot, or been totally disabled in one hand or one foot. *Joseph Wirth* (Asst. Sec. Hawkins), 1 P. D., 381.

Where a pensioner's disability is confined solely to his foot, a rating of \$24 per month as for a disability "equivalent to the loss of a foot" is erroneous under the act of March 3, 1883, which provides said rate only (1) for the loss of the foot, or (2) for its total and permanent disability (which is necessarily equivalent to its loss), or (3) for such disability from other causes as produces an incapacity to perform manual labor equivalent to the loss of a hand or a foot. Citing *M. V. B. Richardson*, 1 P. D., 375; *Allen Cook*, *ibid.*, 365. *Joseph Becher* (Asst. Sec. Hawkins), 2 P. D., 109.

By operation of law approved March 3, 1883, the rating for third-grade disabilities was increased from \$18 to \$24 per month; the former rating, in the application of it to the degree of disability for which it was prescribed in section 4698, Revised Statutes, having been abolished. *Thomas Stapleton* (Asst. Sec. Bussey), 3 P. D., 48.

The act of March 3, 1883, substituted the rate of \$24 per month for that of \$18 per month, which had been provided by section 4698, Revised Statutes, for a disability equivalent to the loss of a hand or a foot. The rate of \$18 was retained by the proviso in said act (March 3, 1883), for the purpose only

2. Grades—Continued.

(c) Third—Continued.

of dividing proportionately for any degree of disability more than "total" (§8) and less than the loss of a hand or a foot, or for a disability equivalent thereto. *James G. Smith* (Asst. Sec. Bussey), 3 P. D., 172.

There is no \$18 rate provided by law, nor has there been since the passage of the act approved March 3, 1883. *Francis M. Williams* (Asst. Sec. Bussey), 3 P. D., 401.

The act of March 3, 1883, establishes \$24 per month in place of \$18 per month as the third-grade rate, and all pensioners who are rated at third grade, and likewise all claimants for increase, are entitled to \$24 per month under said act. *Ibid.*

An allowance subsequent to March 3, 1883, of \$18 as a third-grade rating is erroneous, and where the medical examination on which such allowance was based shows no title to third-grade rating the medical referee may exercise his discretion as to ordering a test examination to ascertain whether such rate should be reduced or increased. *Alexander Martin* (Asst. Sec. Bussey), 4 P. D., 378.

The act of March 3, 1883, substituted the rate of \$24 in place of \$18, as previously provided in section 4698, Revised Statutes. The rate of \$18 was retained only for the purpose of proportionately dividing degrees of disabilities established for which section 4695, Revised Statutes, made no provision. Since March 3, 1883, the loss of a hand or a foot, or a total and permanent disability of hand or foot, or other disabilities which rendered incapacity to perform manual labor equivalent to loss of hand or foot, contracted or incurred in service, entitled soldier of the late war to a pension of \$24 per month. Order No. 184 of the Pension Bureau, dated September 6, 1892, abrogated as unauthorized by law. *John P. Besser* (Asst. Sec. Reynolds), 7 P. D., 146.

Pensioner, a captain, was pensioned for disability due to gunshot wound of left arm at \$20 per month (total of his rank). His pension was subsequently increased to \$24 per month from January 13, 1886, the date of the examining surgeon's certificate showing that the disability resulting from such wound was equivalent to the loss of a hand. In his appeal he contends that his increased rate should have commenced March 3, 1883, the date of the act fixing the rate of \$24 for a disability equivalent to the loss of a hand or foot: *Held*, That appellant's rate of pension for total of his rank being higher than was provided for a disability equivalent to the loss of a hand prior to the passage of the act of March 3, 1883, it was fixed without

2. Grades—Continued.**(c) Third—Continued.**

reference to his disability being an equivalent one, as named in said act, and before he could avail himself of the rate provided by said act an application had to be filed claiming such increase and a medical examination held to ascertain whether appellant's disability was such as was mentioned in the act; and under section 4698½, Revised Statutes, the increase when allowed could not be made to commence prior to the date of the examining surgeon's certificate made under such pending claim for increase. *Christian H. Goebel* (Asst. Sec. Reynolds), 7 P. D., 480.

(d) Intermediate.

No intermediate grade between \$18 and \$24 is provided by law. Overruling a prior decision herein. *George P. Moore* (Sec. Delano), 2 P. D. (o. s.), 366.

See also AID AND ATTENDANCE.

3. Equivalent disabilities—act of August 4, 1886.

The act of August 4, 1886, merely substitutes for the rate of \$24 per month the rate of \$30 per month for the loss of or total disability in hand or foot, but leaves unchanged the rating of \$24 per month on account of equivalent disabilities, as provided for in the act of March 3, 1883. *Joseph Becher* (Asst. Sec. Hawkins), 2 P. D., 109.

See also SUBTITLE 2 (b) and (c).

4. Minor nonspecific disabilities.

Disabilities of a less degree than one equivalent to the loss of a hand or a foot will be rated in fractions of \$18. The lowest rate allowed is 2/18 per month and the highest 17/18. *Francis M. Williams* (Asst. Sec. Bussey), 3 P. D., 401.

Minor permanent disabilities should be rated in accordance with the schedule of rates fixed by the Commissioner of Pensions and approved by the Secretary of the Interior, as modified from time to time. *Communication* (Asst. Sec. Bussey), 5 P. D., 39.

5. Total disability—of hand.

Where a pensioner's "hand is nearly useless—can hold small light objects between the thumb and forefinger"—as shown by a medical report, such disability is included in the expression "totally disabled in the same" used in the act of August 4, 1886, the hand being useless for all practical purposes, and is ratable under said act at \$30 per month. *John R. Weddle* (Asst. Sec. Hawkins), 2 P. D., 97.

5. Total disability—Continued.

(a) Of arm.

"Total disability" of an arm is not ratable under the act of March 3, 1883. *Jay Spencer, alias Frank Stout* (Asst. Sec. Bussey), 4 P. D., 120.

Where, although the motion of the arm is greatly impaired, the thumb can be brought into contact with the palm of the hand, and there is some grip in the hand, so that the hand is of some practical use, the arm is not totally disabled within the meaning of the act of August 4, 1886. *George Garfield* (Asst. Sec. Bussey), 4 P. D., 258.

(b) Of foot.

Certificates of examinations showing pensioner's disability was "total disability of the foot:" *Held*, Ratings of \$16 from September 7, 1887, and \$24 from October 30, 1889, were erroneous, and should have been \$30 from September 7, 1887, which is directed. *Harrison H. Mason* (Asst. Sec. Bussey), 4 P. D., 244.

6. Particular disabilities—ankylosis of wrist.

Claimant is receiving \$8 per month for ankylosis of wrist, which, under the law, is all that he is entitled to. *George M. Row* (Asst. Sec. Hawkins), 1 P. D., 147.

(a) Deafness.

Severe deafness of both ears should be rated one-half disability. *R. K. Baird* (Sec. Schurz), 6 P. D. (o. s.), 87.

For total deafness or deafness approaching to total, affecting one ear, one-eighth of a total pension may be allowed. For slight deafness in both ears, or severe or total deafness in one ear and slight deafness in the other, one-fourth of a total pension. For severe deafness of both ears, or total deafness in one ear and severe deafness in the other, one-half of a total pension; or if the deafness should exist in a degree nearly total, three-fourths of a total pension. For total deafness the pension for total disability should be allowed, except in the cases for which the rate for total disability is less than \$13 per month. *Instructions* (Sec. Schurz), 6 P. D. (o. s.), 300.

The practice is changed so that for total deafness of both ears \$13 shall be considered 13/18 as fixed by section 4696, Revised Statutes, and inferior degrees shall be 12/18, 11/18, etc. *Instructions* (Sec. Teller), 13 P. D. (o. s.), 472.

A pensioner who, being totally deaf, is pensioned at \$30 per month under the act of August 27, 1888, can not be given the next higher rate of \$50 on account of some other disability

6. Particular disabilities—Continued.

(a) Deafness—Continued.

which fails to produce total and permanent helplessness. The law does not authorize any rate intermediate between the two grades, viz, \$30 and \$50 per month. *Christopher H. Moore* (Asst. Sec. Bussey), 3 P. D., 271.

Slight deafness of one ear is ratable at \$2; severe deafness of one ear at \$4; and said rates shall be allowed where the hearing in both ears is impaired equivalently to said degrees of deafness; but for less than slight deafness of both ears, as now defined in the schedule and in all original claims adjudicated since December 4, 1891, and hereafter where a pensionable degree of disability is found, rates shall be allowed from the date of filing claim or from discharge in accordance with the schedule as hereby modified, and with the practice in other cases of minor and nonspecific disabilities. But a rate shall not be allowed for disabilities now added to the schedule at any period in excess of the rate allowed by the Bureau at that period for the lowest ratable disability named in the then existing schedule, or by the practice allowing a nominal rate over a period when the disability was of very slight degree, nor shall the rate allowed for the several degrees of deafness at any time be in excess of those provided for in the schedule of December 4, 1891, as herein amended. *John Severin* (Asst. Sec. Bussey), 6 P. D., 77.

The evidence showing less than "total or nearly total deafness" of one ear only, prior to date of filing declaration, December 4, 1890, rejection as to pension prior to that date was proper under the practice then in vogue; but as the evidence showed a slight deafness in both ears only, the rating of \$25 per month allowed from December 4, 1890, to December 4, 1891, was improper under the schedule of rates made pursuant to the act of August 27, 1888, which rated that degree of deafness at \$15 per month until December 4, 1891, when a revision of said schedule fixed the rating at \$6 per month: *Held*, also, that pension was properly reduced, in 1892, to \$6 per month, under the decision in the case of *John Severin*, 6 P. D., 77. *George W. Payne* (Asst. Sec. Bussey), 6 P. D., 245.

b) Eye, loss of, and loss of sight of.

The medical referee makes a proper distinction in rating between loss of an eye and the loss of the sight of an eye, for the reason that the latter is rarely attended with any deformity, while the former always is, and thus constitutes a more serious disability. *O. H. Krise* (Sec. Delano), 2 P. D. (o. s.), 81.

6. Particular disabilities—Continued.

(b) Eye, loss of, and loss of sight of—Continued.

The practice is changed so as to allow a rating of total pension, according to rank, for the loss of sight of one eye where the other eye is not affected by sympathy, and of third grade, or \$18, for the loss of the eye and consequent deformity, where that amount is less than total for rank. *Instructions* (Sec. Teller), 13 P. D. (o. s.), 472.

(c) Finger, loss of.

There is no specific rate of pension provided by law for the loss of a finger. *Stephen Minor* (Sec. Schurz), 6 P. D. (o. s.), 274.

(d) Hand and foot, loss of.

No higher rate than \$18 per month for each of the permanent specific disabilities, loss of hand and loss of foot, named in the act of February 28, 1877, may be allowed under said act or subsequent laws, as held by the Assistant Attorney-General on submission to him of the question. *Charles Lovely* (Asst. Sec. Hawkins), 2 P. D., 288.

A pensioner on account of loss of "a hand and a foot" is not entitled to a rating for such disability under either section 4697 or section 4698, Revised Statutes, the act of June 18, 1871, or the act of June 16, 1880. Affirming former decision herein, 13 P. D. (o. s.), 470, decision in *Charles Lovely*, 2 P. D., 288, and ruling 222. *Oscar Dunlap* (Asst. Sec. Hawkins), 2 P. D., 291.

(e) Hernia:

The rule of the office allowing one-half of a total pension for single uncomplicated hernia is approved, and subsequent increase must be governed by the provisions of section 4698½, Revised Statutes. *Arthur Hendricks* (Actg. Sec. Bell), 7 P. D. (o. s.), 195.

In cases of hernia on one side, not complicated, small and easily retained by truss, the rate of pension should be for one-half disability. *Instructions* (Sec. Kirkwood), 8 P. D. (o. s.), 366.

In similar cases, as above, of double hernia, the rate of pension should be three-fourths. *Ibid.*

In cases of hernia of one side, so large as to be difficult to retain by truss, rate should be three-fourths or total, depending on degree of difficulty in retaining. *Ibid.*

In cases of double hernia, so large as to be difficult to retain by a truss, rates may be double those allowed for hernias retained without difficulty. *Ibid.*

In cases above mentioned, complications may exist which may warrant allowance of higher rates than stated. *Ibid.*

6. Particular disabilities—Continued.**(e) Hernia—Continued.**

In cases where hernia can not be controlled and retained by a truss, the disability must be estimated by comparison with that produced by the loss of hand or foot, or with cases entitling to a higher rate than for loss of hand or foot. *Ibid.*

With a view to secure uniformity in the rates of pension which have been heretofore allowed, in excess of those indicated, the cases should be readjusted from the date of last payment, but no case should be disturbed, except where it clearly appears that the rates exceed those which should have been allowed. *Ibid.*

(f) Leg, loss of one, and total disability of other.

See SUBTITLE 2 (a).

7. Arrears.

Arrears of pension under the act of March 3, 1879, can only be allowed at such rates as were established by the laws in force over the period for which the arrears are computed. *James S. Coleman* (Sec. Teller), 14 P. D. (o. s.), 239.

8. Ante-rebellion pension—special act.

Under section 3 of the act of July 25, 1866, the pensions of those whose right to pension accrued subsequent to the war of the Revolution and prior to March 4, 1861, should be rated, from and after the passage of said act, the same as are the pensions of those whose right to pension accrued under acts passed since March 4, 1861; and pension allowed by special act is, under section 15 of the act of July 27, 1868, subject to be varied in amount by the general laws which may be in force at each successive period when pension becomes payable. *Widow of David Porter* (Sec. Cox), 7 L. B. P., 111.

9. Under act of July 27, 1868 (sections 13 and 15).

The provisions of section 13 of the act of July 27, 1868, apply to all classes of pensions except those granted by special act and those wherein pension has been granted on account of services rendered during the war of the Revolution, in which last-named class pension should continue without any reduction of rate, but pensions granted by special act should, as provided in section 15 of said act of July 27, 1868, be increased or reduced in accordance with the ratings prescribed in the general laws in force at each successive period when such pensions become due and payable. *Communication to the Second Comptroller of the Treasury* (Sec. Cox), 7 L. B. P., 169.

10. Under act of June 27, 1890—order 164.

Under Order 164 the ratings recommended for the several disabilities found should not be added together in establishing a rating under act of June 27, 1890, but if the sum of the disabilities found would entitle to a "6/18" rating under the general law the minimum rate under act of June 27, 1890, should be allowed. *Henry H. Weike* (Asst. Sec. Bussey), 6 P. D., 193.

(a) Contra.

When by Order No. 164 of the Commissioner of Pensions, October 15, 1890, it was declared that disabilities under the act of June 27, 1890, should be rated as if of service origin, the very principle which governed ratings under said act was displaced and a rule applicable to a different law was substituted. *Charles T. Bennett* (Asst. Sec. Reynolds), 7 P. D., 1.

Rates under said act are to be graded between substantial impairment of ability to earn a support by manual labor, entitling to minimum (\$6) rating, and inability to earn practically any support whatever, thereby entitling to the maximum (\$12) rating. *Francis Keenan* (Asst. Sec. Reynolds), 7 P. D., 52.

Claimant having three external piles, each one-fourth inch in diameter, and numerous internal piles, from one-eighth to one-half inch in diameter; considerable tenderness in region of liver; slight pterygium of both eyes, sight of one defective, but otherwise sound: *Held*, Rating of \$8 is proper, although the ratings recommended for each disability aggregate \$20. *Henry Medley* (Asst. Sec. Bussey), 6 P. D., 102.

As claimant is rated under his pending claim under the act of June 27, 1890, at the same rate as he is now receiving under the act of January 29, 1887, rejection of said claim was proper. *Ibid.*

11. Under special act.

Rate fixed by special act can not be varied under the provisions of the general law. *Austin R. Mills* (Sec. Schurz), 4 P. D. (o. s.), 186.

The rate not being specified in the special act under which claimant is pensioned, is determined by the general law, under which \$30 per month is the highest rate allowable on account of his disability, the evidence showing a total incapacity to perform manual labor, but not total helplessness requiring regular aid and attendance. *George Zieffle* (Asst. Sec. Bussey), 4 P. D., 14.

12. Widow's pension.

A pensioner, previous to his death, was in receipt of a pension of \$72 per month under the provisions of the act of June 16, 1880, and after his death a pension certificate granting \$30 per month was issued to his widow under section 4702, Revised Statutes, but the latter claims to be entitled under that section, as widow, to the same amount of pension which her husband was in receipt of, viz, \$72 per month: *Held*, that the widow's pension is limited to the amount given for "total disability" by section 4695, Revised Statutes. *Actg. Atty. Gen. Phillips*, 18 Op., 39.

The claim of Mrs. Burnett for a pension, as widow, considered in connection with the acts of June 18, 1874, and June 16, 1880, and *Held*, That those acts did not change or increase her rights, which are still governed, as to the amount of the pension to which she is entitled, by section 4695, Revised Statutes. *Atty. Gen. Brewster*, 18 Op., 73.

Pension to widows, under section 4702, Revised Statutes, is the pension for "total disability" granted by section 4695, Revised Statutes. *Burnett v. U. S.*, 116 U. S., 158.

Where widow of a private soldier pensioner was married to said pensioner subsequent to March 19, 1886, she is entitled to a pension of \$8 per month. *Mary Ellen Ransbottom* (Asst. Sec. Reynolds), 7 P. D., 141.

The rate of widow's pension provided for in sections 4730 and 4731, Revised Statutes, is, by the provisions of section 4712, Revised Statutes, fixed by the provisions of section 4702 and section 4695 at the rate that her husband would have been entitled to receive for "total disability," and the term "total disability" named in the various sections refers to the "total disability" for which section 4695 fixes the maximum rates. *Sarah J. Paynter* (Asst. Sec. Reynolds), 8 P. D., 16.

13. Tables of rates.

(a) Rates fixed by law.

For total disability (section 4695, Revised Statutes):

\$30, lieutenant-colonel and higher rank.

\$25, major.

\$20, captain.

\$17, first lieutenant.

\$15, second lieutenant.

\$10, Navy and warrant officers.

\$8, private.

For permanent and specific disabilities:

Act of February 12, 1889; \$100, loss of both hands.

Act of June 17, 1878; \$72, loss of both hands, both feet, or both eyes.

13. Tables of rates—Continued.

(a) Rates fixed by law—Continued.

Act of March 4, 1890; \$72, total and permanent helplessness.
 Act of July 14, 1892; \$50, frequent and periodical attendance.
 Act of June 16, 1880; \$50, increase to \$72.
 Act of August 4, 1886; \$30, \$36, \$45, divisions of \$18.
 Act of March 3, 1879; \$37.50, amputation at hip joint.
 Act of March 3, 1885; amputation arm at shoulder joint, \$37.50.
 Act of February 28, 1877; \$36, loss of hand and foot.
 Section 4698, Revised Statutes; \$31.25, \$24, \$18, \$13.
 Act of June 18, 1874; \$31.25.
 Act of August 27, 1888; \$30, total deafness increased to.
 Section 4697, Revised Statutes; \$25, \$20, \$15.
 Act of June 18, 1874; (2) \$24, loss of arm at or above elbow and leg at knee.
 Act of March 3, 1883; \$24, \$30, divisions of \$18.
 Act of March 19, 1886; \$12, increase of widow's pension.
 Act of August 5, 1892; \$12, army nurses.
 Act of January 5, 1893; \$12, increase of destitute and disabled Mexican soldiers.
 Act of January 29, 1887; \$8, Mexican soldiers and widows.
 Act of July 27, 1892; \$8, Black Hawk, Creek, Cherokee, and Seminole wars.
 Act of June 27, 1890; \$6 to \$12, proportioned to incapacity, etc.

(b) Rates fixed by the Commissioner for disabilities not specified by law.

Anchylosis of shoulder, 12/18.
 Anchylosis of elbow, 10/18.
 Anchylosis of knee, 10/18.
 Anchylosis of ankle, 8/18.
 Anchylosis of wrist, 8/18.
 Loss of sight of one eye, 12/18.
 Loss of one eye, 17/18.
 Nearly total deafness of one ear, 6/30.
 Total deafness of one ear, 10/30.
 Slight deafness of both ears, 6/30.
 Severe deafness of one ear and slight of the other, 10/30.
 Nearly total deafness of one ear and slight of the other, 15/30.
 Total deafness of one ear and slight of the other, 20/30.
 Severe deafness of both ears, 22/30.
 Total deafness of one ear and severe of the other, 25/30.
 Deafness of both ears existing in a degree nearly total, 27/30.
 Loss of palm of hand and all the fingers, the thumb remaining, 17/18.
 Loss of thumb, index, middle, and ring fingers, 17/18.
 Loss of thumb, index and middle fingers, 16/18.

13. **Tables of rates—Continued.**

(b) **Rates fixed by the Commissioner for disabilities not specified by law—Continued.**

- Loss of thumb and index finger, 12/18.
- Loss of thumb and little finger, 10/18.
- Loss of thumb, index and little fingers, 16/18.
- Loss of thumb, 8/18.
- Loss of thumb and metacarpal bone, 12/18.
- Loss of all the fingers, thumb and palm remaining, 16/18.
- Loss of index, middle, and ring fingers, 16/18.
- Loss of middle, ring, and little fingers, 14/18.
- Loss of index and middle fingers, 8/18.
- Loss of little and middle fingers, 8/18.
- Loss of little and ring fingers, 6/18.
- Loss of ring and middle fingers, 6/18.
- Loss of index and little fingers, 6/18.
- Loss of index finger, 4/18. (See note.)
- Loss of any other finger without complications, 2/18. (See note.)
- Loss of all the toes of one foot, 10/18.
- Loss of great, second, and third toes, 8/18.
- Loss of great toe and metatarsal, 8/18.
- Loss of great and second toes, 8/18.
- Loss of great toe, 6/18.
- Loss of any other toe and metatarsal, 6/18.
- Loss of any other toe, 2/18. (See note.)
- Chopart's amputation of foot, with good results, 14/18.
- Pirogoff's modification of Syme's, 17/18.
- Small varicocele, 2/18. (See note.)
- Well-marked varicocele, 4/18. (See note.)
- Inguinal hernia which passes through the external ring, 10/18.
- Inguinal hernia which does not pass through the external ring, 6/18.
- Double inguinal hernia, each of which passes through the external ring, 14/18.
- Double inguinal hernia, one of which passes through the external ring and the other does not, 12/18.
- Double inguinal hernia, neither of which passes through the external ring, 8/18.
- Femoral hernia, 10/18.

[NOTE.—The act of March 2, 1895, fixes the minimum rate of pensions at \$6 per month.]

See also AID AND ATTENDANCE; AMPUTATIONS; APPEAL; ARREARS; BLINDNESS; CERTIFICATES (Of Examination); INCREASE; INSANE PERSONS; JURISDICTION; MEDICAL REFERENCE; MINORS; RANK; REIMBURSEMENT; RESTORATION; SPECIAL ACT.

RECONSIDERATION.**By the Pension Bureau—when warranted.**

When no reason is assigned by an applicant or an attorney why a decision given by the Pension Office should be reconsidered, and no new evidence bearing on the point on which the claim was rejected is presented, that office may properly refuse to reconsider its action. *Samuel Short* (Sec. Kirkwood), 8 P. D. (o. s.), 314.

Where a claim has once been adjudicated and the evidence presented for reconsideration reveals the fact that no pensionable disability exists, rejection was proper. *Samuel Wardlow* (Asst. Sec. Hawkins), 1 P. D., 266.

See also APPEALS; PRACTICE; RERATING; RES ADJUDICATA.

RECORDS.

See DESERTION; EVIDENCE; FEE; SERVICE; WAR DEPARTMENT.

RECURRENT DISABILITY.

See ORIGIN.

REDUCTION.

1. **Commissioner's power—act of June 21, 1879.**
 2. **When proper, generally.**
 - (a) *Must be based on certificate of examination.*
 - (b) *When subsequent law fixes a less rate for the pensioned disability.*
 3. **When based on certificate not showing decrease, erroneous.**
 4. **Clerical error—act of December 21, 1893, not applicable.**
1. **Commissioner's power—act of June 21, 1879.**

Under the act of June 21, 1879, the Commissioner of Pensions had authority to reduce appellant's pension from \$72 to \$30 per month, and the fact that said pension was subsequently increased to \$50 per month gives claimant no right, under act of June 16, 1880, to have his pension at the rate of \$72 per month. Citing with approval *Lucinda Gaskill*, *Patrick Preston*, *John Douglas*, *William L. D. O'Grady*, *William H. Garrison*, *Joseph Faulkner*, and *Uria W. Romine*, 1 P. D., 29, 41, 52, 222, 262, 292, and 299. *Margaret Gaw* (Asst. Sec. Hawkins), 1 P. D., 369.
 2. **When proper, generally.**

Where, in a claim for increase of pension, it appears upon satisfactory evidence that the pensioner is receiving a higher pension than that to which he is entitled, the claim for increase

2. When proper, generally—Continued.

should be rejected and the pension reduced to the rate to which he is actually entitled. *William H. Sain* (Sec. Schurz), 6 P. D. (o. s.), 425.

Pension in this case having been increased to \$50 per month under the act of June 18, 1874, and subsequently to \$72 under the act of June 16, 1880, but thereafter reduced to \$24 on evidence showing the disability did not cause total helplessness, it is held that the facts showed a rate of \$50 should not have been allowed, as pensioner was neither totally helpless nor, if helpless, permanently so; also, that the allowance of that rate was an error of judgment, and reduction was proper. *Hugo Eichholtz* (Sec. Kirkwood), 8 P. D. (o. s.), 107.

(a) Must be based on certificate of examination.

Where a certificate was issued in 1865, allowing pension at \$8 per month, but it failed to reach the pensioner until 1874, when he was paid thereunder but \$6 per month instead of \$8, it was held he should be paid the amount called for in the certificate up to the time a certificate of examination showed title to lesser rate. *James Fox* (Actg. Sec. Cowen), 3 P. D. (o. s.), 62.

A pensioner's rating can not be lawfully reduced except as the result of a special medical examination, under section 3 of the act of June 21, 1879, showing a decrease of pensioned disability since the issuance of his present certificate of pension. *Francis M. Williams* (Asst. Sec. Bussey), 3 P. D., 401.

Pension having been reduced from \$12 to \$8 per month, without a medical examination being held for more than three years, it is held that the action was error, and claim should be reopened and pensioner be allowed the benefit of another medical examination. *William L. Hulse* (Asst. Sec. Reynolds), 8 P. D., —.

(b) When subsequent law fixes a less rate for the pensioned disability.

Where a pension has been granted on account of a certain disability at a higher rate than the rate for such disability which may be subsequently fixed by law, the pension should be reduced from the passage of such law to the rate thereby fixed, provided that the law which fixes such rate does not definitely provide for the commencement of the new rate. *Roger Bellis* (Sec. Delano), 1 P. D. (o. s.), 262.

3. When based on certificate not showing decrease, erroneous.

Where it appears that the rate of pension was reduced on report of a medical examination which did not indicate a

3. When based on certificate not showing decrease, erroneous—
Continued.

decrease in the extent of the disability to justify such reduction the former rate should be restored. *Jacob Subers* (Sec. Schurz), 6 P. D. (o. s.), 350.

See also SUBTITLE 2 (a).

4. Clerical error—act of December 21, 1893, not applicable.

The act of December 21, 1893, has no application to cases where a reduction of the pension was made to conform to the decision of the Bureau of Pensions and to correct a clerical error, the pension certificate showing a higher rate of pension than that originally approved by the Commissioner. *Archibald A. Rudder* (Asst. Sec. Reynolds), 7 P. D., 488.

See also EVIDENCE; MEDICAL REFEREE; RATING RES-
TORATION.

REELECTION.

See ELECTION.

REFUNDMENT.

See ATTORNEYS; FEE; REIMBURSEMENT.

REIMBURSEMENT.

1. Where law, under which payments were withheld, is repealed.
2. For overpayments of pensions, generally.
3. Where payment was under construction of law.
 - (a) *Payment through error of judgment in Pension Office.*
 - (b) *On erroneous rating.*
 - (c) *Through mistake.*
 - (d) *Clerical error.*
 - (e) *Payment covering a period of service.*
 - (f) *Fraud of pensioner.*
 - (g) *Payment to widow after her remarriage.*
 - (h) *Two pensions to one person.*
 - (i) *Leading opinion by Assistant Attorney-General Shields.*
 - (j) *Payment through mistake of pension agent.*
4. Overpayments under one law not recoverable from pension under other laws.
 - (a) *Recovery from pension under act of June 27, 1890.*
5. Attorney's fee payable only after reimbursement.

1. Where law, under which payments were withheld, is repealed.

The act of May 20, 1836, placed pensioners on precisely the same footing as if the act to prevent defalcations, etc., had never been passed; consequently, all moneys which have been withheld from pensioners under the construction theretofore given to the act to prevent defalcations ought to be refunded. *Atty. Gen. Butler*, 3 Op., 135.

2. For overpayments of pensions, generally.

Pensions at common law are liable to set-off, and the common law remains unchanged except as it may be affected by the act of May 20, 1836, which applies only to defalcations by disbursing officers, and can not, by any fair construction, be made to affect a mere adjustment of pension where the pensioner has been paid, through mistake of fact, more than he was entitled to. (Attorney-General Butler having expressed a contrary opinion (See SUBTITLE 3, *f*), Attorney-General Legare adds to above: "If Mr. Butler's opinion has been acted on and is grown into settled practice, I would not advise you to disturb it now.") *Atty. Gen. Legare*, 4 Op., 70.

Under the act of May 20, 1836, which has never been repealed, pension money can not be withheld to reimburse the Government for overpayment on account of back pay, nor for any money due it by any person whatever, except in case a pensioner has been overpaid pension. Overruling former decision of September 14, 1874. *Mary J. Rushmore* (Sec. Delano), 2 P. D. (o. s.), 297.

Affirmed: *William Irving* (Actg. Sec. Cowen), 3 P. D. (o. s.), 54; and *Margaret Hensley* (Sec. Chandler), *ibid.*, 102.

When the Government discovers that pension money has been erroneously paid it has the undoubted right to reimburse itself from moneys due by it to the party. In this case both money commutation for artificial limb and pension money were withheld to reimburse for an overpayment made during a period the pensioner had been in the invalid corps. *James Kelly* (Sec. Chandler), 3 P. D. (o. s.), 433.

3. Where payment was under construction of law.

As the tribunal to whom the construction of the law under which claimant was paid pension was confided by the Government has decided she was embraced in its provisions, she was entitled to hold it, and the amount so paid can not be set off against the pension which she is entitled to receive under an act subsequently passed. *Sophia Gardner* (Atty. Gen. Taney), 2 Op., 532.

(a) Payment through error of judgment in Pension Office.

Overpayment to a pensioner through an error of judgment in the Pension Office, for which he was not responsible, will not be required to be refunded. *John P. Laundon* (Sec. Schurz), 6 P. D. (o. s.), 370.

Recovery of pension, when paid upon an erroneous judgment and not through fraud or mistake of fact, is without authority of law or the rules of practice. *Assistant Attorney-General Shields* (6 P. D., 297).

3. Where payment was under construction of law—Continued.**(a) Payment through error of judgment in Pension Office—Continued.**

Pension was allowed in this case under the general law, upon an erroneous judgment as to the sufficiency of evidence of the contributions of soldier, and when additional evidence was filed showing that no contributions had been made, the pensioner's name was dropped from the rolls. There was no fraud on the part of the pensioner in procuring the pension, nor mistake of fact in its allowance, but there was failure to ascertain a fact, and when pension was allowed to her under act of June 27, 1890, it was error to withhold such pension to reimburse the Government for the amount paid by reason of the former erroneous judgment. That action should be rescinded. *Mary Chryst* (Asst. Sec. Reynolds), 8 P. D., 242.

Where pension has been allowed in ignorance of some fact which, when brought to light, results in the pensioner's name being dropped from the roll, and it appears that the failure to ascertain such fact before allowance was not due to any fraudulent concealment on the part of the claimant, but to a want of proper diligence on the part of the officials of the Pension Bureau, and the fact referred to, when ascertained, does not necessarily or certainly establish error in the allowance, the erroneousness of such action being only a matter of opinion or judgment: *Held*, That there was not such a "mistake of fact" as will warrant the Bureau in withholding payment of pension due under another claim in order to recover the amount paid on the former allowance. *Alexander C. F. Knoop* (Asst. Sec. Reynolds), 8 P. D., —.

The original testimony in this case, upon which pension was allowed, being discrepant rather than false in any material particular, the payments made under such allowance can not be recovered from pension subsequently allowed under the act of June 27, 1890, such allowance being an error of judgment based on insufficient evidence and failure to require more evidence, for which the pensioner should not be held responsible. Overruling to this extent former decision of August 26, 1891, and citing *Mary Chryst*, 8 P. D., 242. *Moses Klein* (Asst. Sec. Reynolds), 8 P. D., —.

(b) On erroneous rating.

Rating, made under the act of March 3, 1885, of \$37.50 per month from March 3, 1879, on account of amputation of an arm at the shoulder joint, being adjudged erroneous, pension was rerated and reduced, and the pensioner suspended until the overpayments made under said rating of \$37.50 should be recovered. Pensioner was subsequently restored to the rolls at \$45 per month from July 1, 1890, but no payment was made

3. Where payment was under construction of law—Continued.

(b) On erroneous rating—Continued.

covering the period of suspension. The Auditor of the Treasury having refused to credit the pension agent with payments made under the last certificate renewing payments, on the ground that reimbursement should be made for all amounts overpaid on account of original erroneous rating, it is held that the suspension of payments herein was erroneous and no recovery can be had for such overpayments, under the decision of Attorney-General Shields (6 P. D., 297). *Communication in re George J. Bond and James E. Engle* (Asst. Sec. Bussey), 4 P. D., 263.

(c) Through mistake.

Where the Commissioner of Pensions, on reviewing his predecessor's allowance of widow's pension from the death of the soldier, reissued the certificate, allowing same from the soldier's discharge, and thereafter determined that this reissue was erroneous and directed that future pension allowed by him under a third certificate similar to the first be withheld until the amount erroneously paid under the second be recovered, the Secretary holds that such recovery was proper, under opinions of Attorneys-General Taney and Legare and Secretary Butler (not specified). *Sarah E. Brooker* (Sec. Cox), 6 L. B. P., 477.

In case a pensioner, by mistake, has been overpaid, no further payments will be made until the overpayment shall be balanced by the accruing pension. *Lovell Purdy* (Sec. Kirkwood), 9 P. D. (o. s.), 124.

This pensioner was pensioned on account of two wounds, one originating while he was first lieutenant, disability being rated at one-half, and the other originating while he was a major, disability being rated at one-fourth; but, on the issue of the certificate error was made by allowing one-fourth total for rank of first lieutenant and one-half total for rank of major, resulting in an overpayment of \$379.87: *Held*, There is no authority of law to make further payment until the overpayment shall be balanced by the accruing pension. *Ibid*.

X Where pension was originally and erroneously allowed claimant at the rate of a second lieutenant, and subsequently a reissue was made to correct rate and error as to rank, the fact being that he was, at the time the disability was incurred, a sergeant, it is proper to withhold the accruing pension to offset overpayment on account of said error, the same being the result of a mistake of fact, and not an error of judgment on the evidence. *James M. Marshall* (Asst. Sec. Reynolds), 8 P. D., —.

3. Where payment was under construction of law—Continued.

(d) Clerical error.

Overpayment must be refunded if the error was a clerical one, made in inserting wrong rate of pension in the brief. *Ebenezer Basset* (Sec. Schurz), 6 P. D. (o. s.), 378.

X When, by reason of a clerical error, the rate of pension was made greater than pensioner had been adjudged entitled to, the reduction of the rate to the correct amount was proper, and the right of the Government in such cases to withhold all pension until reimbursed for overpayments is well settled. *Artemus J. Steenberge* (Asst. Sec. Reynolds), 8 P. D., 145.

(e) Payment covering a period of service.

It being discovered in a claim for increase that the pensioner had drawn pension for a period during which he was in the military service, on allowance of increased pension, pension was withheld to reimburse for the payments covering such period: *Held*, Such payment was illegal and a mistake of fact, but the accruing pension on account of disability can not be withheld to reimburse the Government for such illegal payment, the pensioner being ignorant of any violation of law in receiving it. Citing opinion of Attorney-General Butler, Secretary of War ad interim, in re Captain Vernon, Pension Laws, etc. (1849), 106. *James Moss* (Actg. Sec. Bell), 8 P. D. (o. s.), 112.

Overruled: s. c. following.

James Moss, 8 P. D. (o. s.), 112, is overruled, in view of the report of the Third Auditor that the pensioner, in each voucher presented for payment of his pension for the period to which his appeal relates, made oath that he had not, during said period, been employed in the Army or Navy. He, therefore, perpetrated a fraud, and the pension should be withheld for the purpose of reimbursement. s. c. (Sec. Kirkwood), 9 P. D. (o. s.), 110.

See also SUBTITLE following.

(f) Fraud of pensioner.

Except where overpayment of pension has been obtained by fraud, I think it most agreeable to the spirit of the pension laws to treat the overpayment as a debt, which is no bar to payment of pension, according to the equity of the act of May 20, 1836. *Richard Vernon* (Sec. Butler) Pension Laws, etc. (1849), 106.

Sections 1766 and 4734, Revised Statutes, do not apply to pension money paid a pensioner while he was in service, but such illegal payment is a fraud on the part of the pensioner, under section 4724, Revised Statutes, and reimbursement therefor may be made by withholding legal payments falling

3 Where payment was under construction of law—Continued.**(f) Fraud of pensioner—Continued.**

due to the pensioner. *James Moss*, 8 P. D. (o. s.), 112, overruled so far as it may be in conflict herewith. *Cyrus Pike* (Asst. Sec. Hawkins), 2 P. D., 65.

The claimant, prior to the allowance of pension for ventral hernia, stated that he had a lump or tumor on his abdomen prior to enlistment, and the Bureau, after special examination, decided that said lump or tumor was not a hernia, but subsequently, after further investigation, reversed its former decision and terminated such pension: *Held*, That the facts do not justify imputing fraud to the claimant, and the withholding of current pension due him for another disability in order to recover the amount paid for hernia was erroneous. *Norman Davis* (Asst. Sec. Reynolds), 8 P. D., 288.

(g) Payments to widow after her remarriage.

Where a widow drew her pension after her remarriage, the amount thus wrongfully paid can not be recovered from the pension of the minor children under the latter clause of section 33 of the act of March 3, 1873, which governs the case. *Minors of Louis Roth* (Actg. Sec. Cowen), 1 P. D. (o. s.), 156.

Where a widow pensioner continues to draw pension after her remarriage, the amount thus overpaid may be deducted from the amount due to the minor children if she and the guardian of said children consent in writing thereto, distinguishing this case from the case of *Louis Roth*, in that case there was no consent of either the widow or of the guardian. *Widow of Daniel Forstner* (Sec. Delano), 1 P. D. (o. s.), 387.

Where a widow continued to draw pension after her remarriage the pension, subsequently allowed from the date of her remarriage to minor children who were in her care and custody and were supported by her during the entire period for which she drew pension subsequent to her remarriage, may be withheld for such period. *Minors of James Gardner* (Sec. Teller), 9 P. D. (o. s.), 344.

Where a soldier's widow has drawn pension for herself and minor children after her remarriage, in contravention of law, and is subsequently granted a pension by reason of her second husband's service and death, in determining the amount to be withheld to reimburse the Government she should be credited with so much of such moneys as the children would have been entitled to receive from the date of her remarriage until the last surviving child attained the age of 16 years, where such children have resided with and been supported by her, as well as with the amount to which she was entitled to the date of her remarriage. *Caroline Becker* (Asst. Sec. Reynolds), 7 P. D., 365.

3. Where payment was under construction of law—Continued.**(h) Two pensions to one person.**

A person to whom a pension certificate was granted as the widow of a soldier in the war of the rebellion was also granted a pension certificate as the widow of a soldier in the war of 1812, and drew pensions upon both certificates from March 9, 1878, to December 3, 1883. The Commissioner of Pensions, on discovering this, required her to make an election, and, she having elected to hold the first-mentioned certificate, he ordered the amount which had been paid to her upon the other certificate to be withheld, in installments of \$6 per month, from payments thereafter, and issued an order to the pension agent accordingly: *Advised*, That the order made in this case, being within the general jurisdiction of the Commissioner, is obligatory on the pension agent, and that the accounting officers of the Treasury have no power to disallow payments made by the agent pursuant thereto. *Atty. Gen. Garland*, 19 Op., 215.

In this case the whole of the monthly pension under the certificate which the pensioner elected to hold should be withheld until the amounts so withheld shall equal the sum paid the pensioner under the other certificate. *Ibid.*

(i) Leading opinion by Assistant Attorney-General Shields.

Pension paid in consequence of fraud on the part of the pensioner or of a mistake of fact in the adjudication of the claim may be recovered by withholding accruing pension; but there can be no such recovery where the pension was paid in consequence of an erroneous judgment merely, all the facts being in evidence, and the law being capable of construction. Citing and reviewing at length the various decisions on this subject. *Asst. Atty. Gen. Shields*, 6 P. D., 297.

(j) Payment through mistake of pension agent.

Where a pension agent by mistake overpays a pensioner such overpayment can not be withheld from future payments to such pensioner, but such pension agent must make good to the United States the money so erroneously paid such pensioner. *Pension Agent Barclay* (Asst. Sec. Bussey) 5 P. D., 175.

Contra: *W. W. Dudley*, 6 P. D., 205; *Op. Asst. Atty. Gen.*, 6 P. D., 297; *W. W. Dudley, atty.*, 7 P. D., 78.

Where, in consequence of an unintentional error, a pension agent overpays a pensioner, the Commissioner may order such agent to withhold from subsequent payments to such pensioner a sufficiency of money to reimburse the Government for such overpayment, and thereby correct the error. *Pension Agent Clements* (Asst. Sec. Bussey), 5 P. D., 323.

4. Overpayments not recoverable from pension under other laws.

Payments of an allowance, made under the act of March 2, 1867, covering a period while the recipient was in a subsequent naval service, can not be recovered from pension due under a claim filed under the general law or one filed under the act of June 27, 1890. *John Spencer* (Asst. Sec. Bussey), 6 P. D., 167.

(a) Recovery from pension under act of June 27, 1890.

The act of June 27, 1890, provides pension upon certain conditions peculiar to itself—a pension for dependence not necessarily due either to the line of duty or to the service, but simply to the lack of present means or ability for support; and a pension allowed under this dependence act is not liable as an offset for any erroneous pension payment theretofore made by the Government under the general pension laws. *William Numer* (Asst. Sec. Bussey), 5 P. D., 168.

Overruled: See decision following.

Pension granted under act of June 27, 1890, may be withheld to reimburse the Government for moneys paid under the general law by reason of fraud or mistake. Citing opinion of Assistant Attorney-General Shields, 6 P. D., 297; Cyrus Pike, 2 P. D., 65; Bond and Engle, 4 P. D., 263, and overruling *William Numer*, 5 P. D., 168, and affirming ruling 246. *In re W. W. Dudley, attorney* (Asst. Sec. Bussey), 6 P. D., 205.

The Government may reimburse itself for money fraudulently obtained and erroneously paid on a pension under the old law from the pension granted under the act of June 27, 1890. *William W. Dudley*, 6 P. D., 205, reaffirmed. *Martha A. Rogers* (Asst. Sec. Reynolds), 7 P. D., 90.

5. Attorney's fee payable only after reimbursement.

Where a pension under the act of June 27, 1890, is withheld for the purpose of reimbursing the United States for money advanced claimant under an allowance of pension unwarranted under the general law, the attorney in the new law claim is entitled to a fee, but the same may not be paid until the United States has been reimbursed in full. *W. W. Dudley*, 6 P. D., 205, reaffirmed. *Samuel W. Keys* (Asst. Sec. Reynolds), 7 P. D., 78.

See also ACCRUED PENSION; CONSTRUCTION OF LAWS; EVIDENCE; FRAUD AND MISTAKE; MINORS.

REJECTED RECRUIT.

See SERVICE.

REJECTION.

See APPEALS; NOTICE; PRACTICE.

REMARRIAGE.

1. Bars pension, generally.

- (a) *What is sufficient proof.*
- (b) *Under act of March 3, 1865.*
- (c) *While application is pending.*
- (d) *Contra.*
- (e) *Under act of March 3, 1873—widow, minor.*
- (f) *Under act of March 9, 1878.*
- (g) *Under act of January 29, 1887.*
- (h) *Under act of June 27, 1890—mothers.*
- (i) *Under act of June 27, 1890—widows.*
- (j) *Under act of July 27, 1892.*

2. Revolutionary widow.

3. Prior to July 27, 1868—limitation.

4. Presumption of—under section 4719, Revised Statutes.

1. Bars pension, generally.

A dependent mother pensioned under the act of July 14, 1862, forfeits such pension by remarriage. *Atty. Gen. Bates*, 10 Op., 341.

(a) *What is sufficient proof.*

The living and cohabiting of a widow pensioner with a man and being known and recognized as his wife constitute such a remarriage as will deprive her of her pension. *Mary Banks* (Sec. Schurz), 4 P. D. (o. s.), 438.

Where the question of remarriage of widow of a soldier is involved, cohabitation, as a wife with some man estops her from obtaining a pension. *Mother of Joseph A. Winn* (Sec. Schurz), 5 P. D. (o. s.), 110.

Even though no marriage ceremony is shown to have been performed, the mutual recognition of the parties as husband and wife, their reputation as such, and the admissions of the wife estop her from claiming pension as soldier's widow. *Harriet N. Kingsbury* (Sec. Schurz), 7 P. D. (o. s.), 19.

Where a widow pensioner lives and cohabits with a man as his wife, and they acknowledge themselves to be husband and wife, and are so known in the community in which they live, she is estopped from further drawing pension. *Louise Romere* (Sec. Schurz), 7 P. D. (o. s.), 305.

(b) *Under act of March 3, 1865.*

Under the act of March 3, 1865, a widow loses and minor child acquires pensionable status upon the widow's remarriage without payment to her of any part of pension, and her pensionable status is not revived by the act of June 7, 1888, as to commencement of widow's pension. *Widow of William S. Colderan* (Asst. Sec. Bussey), 4 P. D., 418.

1. Bars pension, generally—Continued.

(c) While application is pending.

A widow's remarriage while her pension application is pending forecloses such claim and bars her from pension, even though certificate was issued, providing she has not received payment of any part of the pension, and the right to pension from the date of the soldier's death descends in such case to his minor children, to the absolute exclusion of the widow. *Catherine Jones, widow* (Sec. Cox), 7 L. B. P., 284; *Martha Watson* (Actg. Sec. Bell), 7 P. D. (o. s.), 212.

(d) Contra.

Under section 4 of the act of March 3, 1865, a widow's remarriage before payment of pension bars her right; but under the sixth section of the act of July 25, 1866, if her application was pending at the time of her remarriage, she is entitled to pension to the date of her remarriage. Overruling *Catherine Jones* (Sec. Cox). *Widow of John Bois Claise* (Actg. Sec. Cowen), 1 P. D. (o. s.), 13.

(e) Under act of March 3, 1873—widow, minor.

Where minor children were pensioned prior to March 3, 1873, and subsequent to March 3, 1865, under act of the latter date, the widow having remarried without payment to her of any pension, such widow is not pensionable under the act of March 3, 1873, providing that children shall be entitled only from the date of widow's remarriage. *Widow of Perry Jackson* (Asst. Sec. Bussey), 6 P. D., 230.

(f) Under act of March 9, 1878.

Remarriage of widow of soldier of war of 1812 forfeits right to pension, although she again becomes a widow. *Former widow of Asa Hickman* (Sec. Schurz), 5 P. D. (o. s.), 333.

Overruled: See SUBTITLE (g) following.

Where a soldier's widow remarried and her second husband died prior to the passage of the act of March 9, 1878, leaving her again a widow on that date, she is pensionable as said soldier's widow under said act, notwithstanding such remarriage. *Widow of Daniel Milliken* (Asst. Sec. Hawkins), 2 P. D., 100.

Overruled: See SUBTITLE (g) following.

Remarriage, before March 9, 1878, of the widow of a soldier of the war of 1812 bars her right under the act of said date. *Hannah Wilson, Mexican war widow* (Asst. Sec. Bussey), 3 P. D., 283.

(g) Under act of January 29, 1887.

Remarriage, before January 29, 1887, of the widow of a soldier of the Mexican war bars her right to pension under the act of that date. Overruling *Milliken-Morrison case*, 2 P. D., 100. *Ibid.*

1. Bars pension, generally—Continued.

(A) Under act of June 27, 1890—mothers.

A mother's remarriage prior to June 27, 1890, precludes her from pension under the act of that date, even though she be in fact dependent. *Communication* (Asst. Sec. Bussey), 4 P. D., 136.

A dependent mother who remarried in 1877 is barred, under section 4708, Revised Statutes, from pension under the act of June 27, 1890. Reconsidered and *held*: The fact of remarriage is not in itself a bar to pension under said act; and if the mother is without other present means of support than her own manual labor, etc., she is pensionable thereunder, notwithstanding such remarriage. *Communication* (Asst. Sec. Bussey), 4 P. D., 137, 429.

See also DEPENDENT RELATIVES, 5 (c).

(i) Under act of June 27, 1890—widows.

The widow of a soldier who again married before the passage of the act of June 27, 1890, has no title to pension under said act. *Ann Smith* (Asst. Sec. Reynolds), 8 P. D., 187.

(j) Under act of July 27, 1892.

The remarriage of the widow of an officer or enlisted man who served in the Indian war excludes her from the benefits provided by the act of July 27, 1892, notwithstanding the dissolution of such marriage by a decree of divorce entered into prior to the passage of said act. *Margaret A. L. Hinton* (Asst. Sec. Reynolds), 8 P. D., 55.

2. Revolutionary widow.

Remarriage of widow of Revolutionary soldier is not a bar if claimant is a widow at time of application. *Widow of Drury Ham* (Sec. Delano), 2 P. D. (o. s.), 304.

3. Prior to July 27, 1868—limitation.

Widows who remarried prior to July 27, 1868, are not pensionable unless application has been filed within five years from that date. *Widow of William H. Fisher* (Sec. Delano), 2 P. D. (o. s.), 337.

4. Presumption of, under section 4719, Revised Statutes.

The presumption of remarriage, mentioned in section 4719, Revised Statutes, raised by the failure of a widow pensioner to claim her pension for three years after the same shall have become due is strengthened by the facts that she lived with a man as his wife and was so recognized in the communities where she resided, and by whom she had borne two children,

4. Presumption of, under section 4719, Revised Statutes—Cont'd.

and that she gave conflicting and false reasons for not claiming her said pension. *Jennette Thompson, widow* (Asst. Sec. Reynolds), 7 P. D., 262.

See also BOUNTY LAND; COMMENCEMENT; DEPENDENT RELATIVES; EVIDENCE; MARRIAGE; REIMBURSEMENT; RESTORATION.

RENEWAL OF PENSION.

See LIMITATIONS.

REOPENING.

See ATTORNEYS; PRACTICE; RERATING.

REPEAL.

See ACCRUED PENSION; ALLEGIANCE; ARTIFICIAL LIMBS; BOUNTY LAND; CONSTRUCTION OF LAWS.

REPORTS.

See APPEALS.

REPRESENTATIVES.

See LEGAL REPRESENTATIVES.

RERATING.

1. Distinguished from increase.
2. When allowable.
3. When not allowable.
4. Evidence, when and when not admissible.
5. Laws and rulings not retroactive.
6. Right of widow as to deceased husband's pension.

1. Distinguished from increase.

Any increase of pension is, in one sense, a rerating, substituting a new rate for a former one, but in practice "rerating" has, and should have, a meaning different from "increase." A rerating, in the proper sense, carries the increase backward as well as forward. *Abram Duryee* (Asst. Sec. Bussey), 3 P. D., 276.

2. When allowable.

Rerating is authorized where the proof shows that the pension allowed for a portion of the period since date of discharge was not proportionate to the degree of disability then existing. *Henry H. Hatch* (Sec. Schurz), 6 P. D. (o. s.), 248.

2. When allowable—Continued.

Where the disability is a loss of a part of hand or foot or other portion of the body, and where the evidence is positive that the disability has been the same from the date of discharge, and the rate of pension has not been proportionate to the degree of disability and not as great as allowed by the office in other cases in all respects similar, the law should not be construed to prevent the allowance of the rate which was usually allowed in cases of the same disability. *William Hultz* (Sec. Schurz), 6 P. D. (o. s.), 462.

Claimant having been pensioned from discharge at \$6 per month, increased to \$8 and to \$16 per month, which was conceded not to be commensurate to the degree of disability existing at the time the rates were fixed, as said disability was partly due to causes existing prior to enlistment, it is held that soldier having been totally and permanently disabled in his left hip and leg from the date of his discharge is entitled to a rerating and to be pensioned at the rate provided by the successive acts of Congress for such disability. *Charles N. Smith* (Asst. Sec. Bussey), 3 P. D., 78.

While the settled rule of the Department that former ratings will not be disturbed unless there has been manifest error, either of law or of fact, is adhered to, yet where it is clear that a mistake has been made in applying the law to the facts, or where the incorrectness of the former action is so manifest upon a review of the evidence that it is not a matter of dispute, the Department will not refuse to do justice because the error is of long standing and has been sanctioned by subsequent action. See *Harrison H. Mason*, 4 P. D., 214, *Christian Miller*, *ibid.*, 351. *Batchelor E. Beachman* (Asst. Sec. Reynolds), 7 P. D., 249.

3. When not allowable.

A claimant having filed a surgeon's certificate of his total disability, was allowed, in 1815, pension at half the allowance for a total disability, and was allowed, in 1821, the full allowance for such disability. He then claimed half rate from 1815 to 1821, and it was held the error committed (if any error was in fact committed) can only be remedied by an application to Congress. *Atty. Gen. Berrien*, 2 Op., 309.

Rerating declined by the office where the pensioner was allowed as high a rate of pension as the evidence on file at the time of its adjudication would justify: Held, That though the disability was permanent it was not specific, as prescribed by law, and the Department was therefore precluded, under section 4698½, Revised Statutes, from revising the action of the office. *Benjamin Fairchild* (Sec. Schurz), 6 P. D. (o. s.), 333.

3. When not allowable—Continued.

In the view of the Department the restriction contained in section 4698½, Revised Statutes, would preclude the office from disturbing the allowance made in a case wherein the disability has varied in degree, the rate of pension having been allowed in accordance with the evidence on file at the date of adjudication. *William Hultz* (Sec. Schurz), 6 P. D. (o. s.), 462.

Where evidence on file showed that disability had been progressive, and the medical examination did not show any injustice to have been done, the case should not be reopened. *Edward Schendel* (Sec. Schurz), 7 P. D. (o. s.), 47.

In the consideration of appeals for rerating, the Department relies upon the certificates of the examining surgeons relative to the degree of disability from time to time. *Wilson G. Gray* (Asst. Sec. Hawkins), 1 P. D., 120.

Where ratings have been made in conformity with the medical recommendations from time to time and are pronounced just and sufficient by the medical referee: *Held*, Not entitled to rerating. *William L. D. O'Grady* (Asst. Sec. Hawkins), 1 P. D., 222.

Where ratings have been made in conformity with medical recommendations from time to time and pronounced just by the medical referee the claimant is not entitled to rerating. *Guardian of Aaron Gaw* (Asst. Sec. Hawkins), 1 P. D., 369.

Ratings made in conformity with medical recommendations from time to time and approved by the medical referee will not be disturbed on appeal. Citing *W. L. D. O'Grady*, 1 P. D., 222, and *John T. Odwell*, *ibid.*, 334. *Guardian of Edward Campbell, alias Henry Mulholland, insane* (Asst. Sec. Hawkins), 2 P. D., 75.

Claimant was pensioned at \$2 per month for disease of ears from September 15, 1883. Subsequently his certificate was reissued to include other causes of disability alleged in his original declaration, and the rate of \$6 per month was allowed from the date of filing such declaration. Upon an application for increase and rerating, the rate was increased to \$17 per month from May 22, 1889. Such increase could not, under section 4698½, Revised Statutes, commence prior to the date of medical examination under the claim for increase. *James M. Dalzell* (Asst. Sec. Bussey), 3 P. D., 414.

In cases of nonspecific disabilities, rerating is allowable only when it plainly appears a mistake was made in the certificate in designating the amount of pension, as determined from the certificate of examinations, in the adjudication of the case;

3. When not allowable—Continued.

and where a pensioner has acquiesced in the reduction of ratings from time to time and filed, within a year from date of adjudication, no evidence with reference thereto, ratings will be allowed to stand. Quoting summary of rulings in appendix to vol. 3 P. D., 423. *John Holt* (Asst. Sec. Bussey), 4 P. D., 240.

The evidence on file at date of adjudication showing the several rates allowed were commensurate with the degree of disability then shown to exist, ratings in which no error of fact or law is manifest will not be disturbed. *James McFarland* (Asst. Sec. Bussey), 4 P. D., 297.

In the absence of the strongest medical or lay evidence to dispute the justice and sufficiency of ratings made by the duly authorized surgeons and boards of medical examiners, when approved by the medical referee, the Department accepts such ratings. *Edwin C. McFarland* (Asst. Sec. Bussey), 4 P. D., 326.

The Department holds that, where a pensioner for nonspecific disabilities has been paid pension for a long period—varying rates from 1862 to 1887—it becomes extremely difficult, not to say hazardous, to rerate the soldier for arrears covering any considerable portion of time. The difficulty arises from the variety of opinions that may be entertained respecting the adequacy of old ratings, and therefore the lack of definite ground for overruling the ratings that have stood unchallenged for years. The hazard arises from the likelihood of setting a precedent that will lead to the overhauling, for purposes of rerating, of an incalculable number of cases all claiming to be meritorious—a precedent that, if followed, would overturn the work of the Bureau of Pensions, and will not be sanctioned. *Sarah A. Adam* (Asst. Sec. Bussey), 5 P. D., 154.

The Department declines to disturb former ratings of pension where it does not appear that a manifest error, either of law or of fact, about which there can be no dispute, was involved. *Andrew Stranahan* (Asst. Sec. Bussey), 5 P. D., 199.

In cases of specific disability, an application for rerating and increasing a pension is allowable only when it appears that, when naming the rate in the pension certificate, a mistake was made in designating the amount of pension authorized by concurring medical examinations, defining the degree and the nomenclature of claimant's disability as approved in the adjudication of the claim itself and reported to the Department. *Martin L. Stover* (Asst. Sec. Bussey), 5 P. D., 353.

4. Evidence, when and when not admissible.

The claimant for rerating has the right to furnish further evidence as to the extent of his disability for the period to which the claim relates. *John E. Frock* (Sec. Schurz), 6 P. D. (o. s.), 251.

Cases of rerating where increase of current pension also is not involved should be determined on the record alone, without admitting new evidence, unless fraud or collusion is suggested, in which cases evidence on that point only should be admitted. *Suggestion in advisory opinion of Assistant Attorney-General Shields*, 6 P. D., 297.

5. Laws and rulings not retroactive.

The law authorizing increase of ratings is not retroactive in its effect, nor is the schedule of rates, as fixed by the Commissioner, authorizing an increase in cases of minor specific disabilities, retroactive in its operation. *William V. Sheaffer* (Asst. Sec. Bussey), 5 P. D., 153.

6. Right of widow as to deceased husband's pension.

A widow has no right to file a claim for rerating of her deceased husband's pension, but she may complete such a claim filed by him and left pending at his death. *Widow of Rowland M. Jones* (Asst. Sec. Hawkins), 1 P. D., 162.

A widow can not make and prosecute a claim for increase of her husband's pension after his death. *Ibid.* (Asst. Sec. Bussey), 3 P. D., 72.

Contra: *s. c.*, *ibid.*, 433.

The widow of a deceased pensioner has no right, under the law, to make and prosecute an original claim for a rerating of her husband's invalid pension. So much of the supplemental decision of April 15, 1890, in the case of Rowland M. Jones (3 P. D., 433) as recognizes such a right is overruled. *Caroline E. G. Colby* (Asst. Sec. Reynolds), 7 P. D., 24.

See also DECLARATIONS; RES ADJUDICATA; REVOLUTIONARY WAR.

RES ADJUDICATA.

1. Generally.
2. When doctrine of res adjudicata is not applicable.
3. When adjudicated cases will be reconsidered, generally.
4. As to construction of law.
5. Questions of weight of evidence, judgment, or opinion.
6. No reconsideration on same facts.
7. New facts must be disclosed or new evidence filed.
 - (a) Cumulative evidence is not sufficient.
8. Where error is manifest.
9. As to fee.
10. As to disability and rating.

1. Generally.

Upon proper application, the Department will review its former decision, upon the facts and the law. *Richard L. Shelley* (Asst. Sec. Hawkins), 1 P. D., 132.

The Department, having once passed upon the question involved in an appeal will not again consider the case, except for reasons such as would justify a court in granting a motion for a new trial. *James Sooney* (Asst. Sec. Hawkins), 1 P. D., 372.

It is not the duty of the Secretary of the Interior to revise matters long since settled and determined by former administrations involving the rights of two parties. *Thomas A. Harris* (Asst. Sec. Reynolds), 7 P. D., 50.

Neither the doctrine of *res adjudicata* nor *stare decisis* is strictly applicable to pension cases, and when adopted by the Department simply becomes a rule which each administration prescribes for itself as a matter of policy or convenience, and may be waived, suspended, or ignored, as justice, policy, or convenience requires. *Mary E. Eastridge* (Asst. Sec. Reynolds), 8 P. D., 5.

2. When doctrine of *res adjudicata* is not applicable.

The doctrine of *res adjudicata* is no bar to a proceeding to set aside action in a case on the ground that it is based on a fraud or a mistake. *Chalkley, alias T. C. Milbourn* (Asst. Sec. Hawkins), 2 P. D., 360.

Where a pension certificate has been issued to a deserter, under a misapprehension of the facts and contrary to law, the Secretary of the Interior has power to refuse payment thereon, and the doctrine of *res adjudicata* does not apply in such a case. *Peter Kenney* (Asst. Sec. Reynolds), 7 P. D., 588.

3. When adjudicated cases will be reconsidered, generally.

The opinion of the Attorney-General of June 15, 1861, to the effect that the head of an Executive Department may lawfully review and reconsider on its merits any claim decided adversely by his predecessor in office, is concurred in and followed in pension adjudications; but a decision of a predecessor will not be lightly disregarded, and a change of action will not be made unless the evidence clearly satisfies the executive officer that the former decision was erroneous, either in law or the facts of the case. *Widow of John Featherson* (Sec. C. B. Smith), 5 L. B. P., 33.

The Supreme Court of the United States has held that the right of an incumbent to review a predecessor's opinion extends only to mistakes in matters of calculation and to cases of rejected claims in which material testimony is afterwards

3. When adjudicated cases will be reconsidered, generally—Continued.

discovered and produced, and in the absence of such testimony such opinion is final and conclusive. (No decision specified.) *Communication to Edward Lilly* (Sec. Harlan), 5 L. B. P., 425.

The right to review a decision of a predecessor should extend only to mistakes in matters of calculation and to rejected claims in which material testimony is afterwards discovered. Quoting and following Supreme Court ruling, as announced in *Edward Lilly* (Sec. Harlan), June 12, 1866. *Theodore Loewe* (Sec. Chandler), 3 P. D. (o. s.), 132.

In view of the former decision herein, by a former administration, adverse to increase from June 10, 1875, and restrictions contained in section 4698½, Revised Statutes, the Department held it was not justified in authorizing allowance of increase prior to June 1, 1881, the date of certificate of examination, although the Commissioner proposed, with the concurrence of the Department, to allow increase from June 10, 1875. *Joseph Hannan* (Sec. Kirkwood), 9 P. D. (o. s.), 76.

Where the right to pension had been determined by this office in 1866, and the allowance of the same was not disturbed in the adjudication of applications for increase in 1872 and 1879, and no evidence having been presented to alter the facts as they existed at the time of the original adjudication or to show that the action then taken was based upon any false or fraudulent representations on the part of the claimant, the propriety of the original allowance of pension should not now be questioned (in an appeal in a pending claim for increase). *Alfred Kite* (Sec. Teller), 9 P. D. (o. s.), 232.

The merits of the claim having been once passed upon, the Department will not review or reconsider its decision or reopen the adjudication of the claim unless it is definitely shown by competent evidence that some error was committed or that new evidence and new facts would materially change the former conclusion; and evidence tending merely to discredit a former witness is not sufficient to change the action taken. Citing *Noah N. Tyner*, 1 P. D., 21; *Birney Hoyt*, *ibid.*, 70; *Rowland M. Jones*, *ibid.*, 162; *Morgan Gordon*, *ibid.*, 188. *John Swartz* (Asst. Sec. Hawkins), 2 P. D., 3.

No new and material evidence tending to change the former decision having been filed, nor any supposed error of law or mistake of fact in the former adjudication pointed out or alleged, the motion for reconsideration is overruled. Citing *Noah N. Tyner*, 1 P. D., 21; *Birney Hoyt*, *ibid.*, 70. *Chambers C. Mullin* (Asst. Sec. Hawkins), 2 P. D., 18.

3. When adjudicated cases will be reconsidered, generally—Continued.

Repeated appeals upon the same same point are not allowable; but if the appellant believes injustice was done him by the former decision, or has come into possession of new and material evidence which he was unable to produce in the previous adjudication, and which would have warranted a favorable decision in the first instance, or could point out any mistake of fact or error of law in said decision, he should apply for a rehearing. Quoting and following Morgan Gordon, 1 P. D., 21. *Edward A. Colnor* (Asst. Sec. Hawkins), 2 P. D., 21.

After a claim has been rejected and rejection affirmed by the Department, a reconsideration of such affirmation is justified upon the ground only that in the affirming decision a manifest error was committed, or that new, material, and important evidence, such as would have warranted a favorable decision in the first instance, is produced by the claimant—new, material, and important evidence which, as it may appear, claimant had failed to procure, even at the expense of proper diligence. Citing Noah N. Tyner, 1 P. D., 21; Birney Hoyt, *ibid.*, 70; Rowland M. Jones, *ibid.*, 162; Morgan Gordon, *ibid.*, 188; John Swartz, 2 P. D., 3; Chambers C. Mullin, *ibid.*, 18; Edward A. Colnor, *ibid.*, 21; John H. Gleason, *ibid.*, 106; Widow of Louis S. Lake, *ibid.*, 111; George S. Newton, *ibid.*, 144. *Robert Hirsch* (Asst. Sec. Hawkins), 2 P. D., 304.

Cases long since adjudicated by previous administrations should not be reopened, reconsidered, or readjudicated, except (1) upon discovery that the pension was procured through fraud; (2) when under the statutes the pension is required to be increased or reduced in accordance with the degree of pensionable disability; (3) when indisputable or manifest error in law or fact is apparent in the record, or (4) when, on presentation of new and material evidence, it is indubitably shown that through mistake the pension was in whole or in part illegally reduced or granted. *Jackson Martin* (Asst. Sec. Reynolds), 7 P. D., 265.

4. As to construction of law.

The interpretation of a law given by the competent authority having jurisdiction of the subject can not be revised or reversed by his successor in the same office so as to affect the rights of those who have received pensions under the first interpretation, although such construction should be deemed by the successor in office erroneous; but the case would be

4. As to construction of law—Continued.

different if any mistake of fact had been committed or the Government imposed on by false testimony. *Atty. Gen. Taney*, 2 Op., 532.

Where claims have been adjudicated by former administrations under a provision of law in regard to which different opinions have been held, it is not proper to disturb such original action, and title to pension in such cases will be considered as finally adjudicated. *Jacob Nix* (Sec. Schurz), 4 P. D. (o. s.), 260.

See also REIMBURSEMENT, SUBTITLE 2.

5. Questions of weight of evidence, judgment, or opinion.

Old cases, long since adjudicated by previous administrations, will not be reopened, reconsidered, or readjusted upon the mere allegations of the pensioner that proper weight had not been given to the evidence in the original adjudication, but only when it is manifest upon the face of the record that an injustice has been done. *Birney Hoyt* (Asst. Atty. F. L. Campbell to Secretary Lamar, who concurred in conclusions of the assistant attorney in transmitting the latter's opinion to the Commissioner of Pensions), 1 P. D., 70.

Cases long since adjudicated by previous administrations will not be reconsidered upon the mere allegation that proper weight was not given to the testimony in the original adjudication. Citing *Chambers C. Mullin*, 2 P. D., 18; *Isaac Sell*, *ibid.*, 172. *James Scanlin* (Asst. Sec. Hawkins), 2 P. D., 148.

Cases long since adjudicated by a previous administration will not be reconsidered nor readjudicated upon the mere allegation that proper weight was not given to the testimony and evidence in the original adjudication. Citing *Chambers C. Mullin*, 2 P. D., 18. *Isaac Sell* (Asst. Sec. Hawkins), 2 P. D., 172.

The Department will not disturb former adjudications for slight or trivial reasons, nor upon a mere matter of opinion as to the weight of evidence, nor upon a matter involving merely an exercise of judgment or discretion, but only where glaring error, mistake, or manifest injustice is apparent from the record or the evidence. Quoting *Noah N. Tyner*, 1 P. D., 21. *Wallace G. Bone* (Asst. Sec. Hawkins), 2 P. D., 310.

Although the Department is inclined to the view that the gross inconsistencies disclosed in the former adjudication of this claim would bring it within the rule stated in the case of *Tyner*, 1 P. D., 21, and justice to other deserving claimants and an equitable administration of the pension laws demand a reopening and proper adjusting of the claim, yet whatever errors were

5. Question of weight of evidence, judgment, or opinion—Cont'd.

committed are now beyond recall, and it is not deemed advisable to even appear to disturb the principle that the Department will not reconsider matters, already adjudicated, upon a mere question of opinion or the weight of evidence. *Ibid.*

It is the well-settled policy of this Department not to consider appeals relating to matters of judgment or discretion settled under former administrations, especially where the former action was many years previous and the subject-matter was then under the jurisdiction of another (the War) Department, and where the party immediately interested has died. *Grandson of John Burnham* (Asst. Sec. Bussey), 4 P. D., 93.

6. No reconsideration on same facts.

Where there is no controversy about the facts, it is well settled that the final decision of the head of a Department is binding upon his successor. Citing Opinions of Attorney-General, 2 Op., 463; 5 Op., 29, 63, 240, 284; 7 Op., 701; 9 Op., 100; 12 Op., 355; *United States v. Bank of Metropolis*, 15 Peters, 400; *United States v. Stone*, 2 Wallace, 525. *Julian Alire* (Sec. Delano), 7 L. B. P., 332.

Reconsideration of decision of former administration of Department is declined in cases wherein title to pension is affected, and where in the original settlement all the facts were presented; there having been no change in the facts or law, the decision should not be reversed, even though the incumbent believes his predecessor committed an error in judgment. *Thomas Riley* (Sec. Schurz), 5 P. D. (o. s.), 304.

In matters involved in doubt (as where in a claim for increase the surgeons differ as to the extent of disability) which must be decided upon mere opinions, it is not deemed proper that decisions carefully and deliberately considered be set aside on the same state of facts which existed when they were originally made. *Hiram C. Shouse* (Sec. Kirkwood), 9 P. D. (o. s.), 66.

The Department declines to disturb a departmental decision made by a former administration when the decision was based upon all the facts appearing in the case which were necessary to be considered in determining the question at issue. *George W. Amos* (Asst. Sec. Reynolds), 8 P. D., 271.

7. New facts must be disclosed or new evidence filed.

The Department will not discuss with anyone the correctness or incorrectness of any of its decisions, but the decision in this case will stand until sufficient medical evidence shall be furnished to show that the claimant is suffering from a pensionable disability. *John Swinton* (Actg. Sec. Cowen), 3 P. D. (o. s.), 35.

7. New facts must be disclosed or new evidence filed—Continued.

It is a well-settled principle that the final decision of a case before the head of a Department is binding upon his successors in the same Department, except when new facts are subsequently brought forward which show that the former decision was erroneous and would probably not have been made if they had been known at the time of the decision. 12 Atty. Gen. Op., 368. *Dan Drake Henry* (Sec. Schurz), 6 P. D. (o. s.), 29.

Reconsideration of former decision by the Department declined, and rule adhered to that new and important evidence must be produced. *Charles Roden* (Sec. Schurz), 6 P. D. (o. s.), 229.

No new and material evidence being filed tending to change or affect the status of this claim, or present it in any different light from that in which it has been already considered by three successive Secretaries of the Interior, the case comes clearly within the rule followed in the cases of Noah N. Tyner, 1 P. D., 21; Birney Hoyt, *ibid.*, 70; Rowland M. Jones, *ibid.*, 162; Morgan Gordon, *ibid.*, 188; John Swartz, 2 P. D., 3; Chambers C. Mullin, *ibid.*, 18, and Edward Colnor, *ibid.*, 21, and will not be further considered. *George S. Newton* (Asst. Sec. Hawkins), 2 P. D., 144.

(a) Cumulative evidence is not sufficient.

Where a case is appealed from the action of the Pension Office refusing to reopen a claim which had once been rejected by this Department, and the question involved is the consideration of new testimony filed since the departmental decision and tending to controvert the evidence of prior unsoundness, the reputation of the witnesses who testified to prior unsoundness being unimpeached, the Department declines to consider such new testimony, it not appearing to be newly discovered, but merely cumulative. *James Scone*y (Asst. Sec. Hawkins), 1 P. D., 372.

Evidence merely cumulative will not justify a reconsideration of a claim. *Louis Ruch* (Asst. Sec. Hawkins), 1 P. D., 390.

Rejection having been affirmed by the Department and the claim fully and finally adjudicated on its merits, it is *res adjudicata*, and an affidavit subsequently filed by a witness contradicting his former testimony before a special examiner is not such new and material evidence as would justify reopening the claim and setting aside the departmental decision, under the established rule in such cases. Citing Noah N. Tyner, 1 P. D., 21; Birney Hoyt, *ibid.*, 70; Rowland M. Jones, *ibid.*, 162; Morgan Gordon, *ibid.*, 188; John Swartz, 2 P. D., 3; Chambers C. Mullin, *ibid.*, 18; Edward A. Colnor, *ibid.*, 21. *John H. Gleason* (Asst. Sec. Hawkins), 2 P. D., 106.

7. New facts must be disclosed or new evidence filed—Continued.**(a) Cumulative evidence is not sufficient—Continued.**

Evidence merely cumulative in character and not affecting the question upon which the claim was rejected, and rejection affirmed on appeal, is not sufficient to disturb the decision of the Department. Citing Noah N. Tyner, 1 P. D., 21; Birney Hoyt, *ibid.*, 70; Rowland M. Jones, *ibid.*, 162; Morgan Gordon, *ibid.*, 188; John Swartz, 2 P. D., 3; Chambers C. Mullin, *ibid.*, 18; Edward A. Colnor, *ibid.*, 21. *Widow of Louis S. Lake* (Asst. Sec. Hawkins), 2 P. D., 111.

Rejection having been affirmed on appeal, and the claim fully and finally adjudicated on its merits, it is *res adjudicata*; and merely cumulative testimony subsequently filed is not competent to reopen the claim. Quoting and following Louis Ruch, 1 P. D., 390. *Simeon White* (Asst. Sec. Hawkins), 2 P. D., 210.

8. Where error is manifest.

Reconsideration of decision of the Department will not be refused where manifest error has been committed, even though new evidence is not presented and no appeal taken within five years from the adjudication of the case. *Elizabeth McClurney* (Sec. Schurz), 5 P. D. (o. s.), 249.

9. As to fee.

Where pensions have been received and fees actually paid, the Secretary of the Interior will decline to disturb such settlements reached under former administrations in accordance with the views of his predecessors. *George Hindson* (Asst. Sec. Bussey), 3 P. D., 101.

The Department declines to disturb the action refusing to approve articles of agreement and allow the attorneys a fee in excess of the amount previously allowed. *Thomas A. Harris* (Asst. Sec. Reynolds), 7 P. D., 50.

10. As to disability and rating.

The rules of the Department prohibit readjudication of a question once determined except upon the production of new and important evidence. Where the question of disability is involved, it having been once determined upon certificate of medical examination prior to the original adjudication, important testimony within the rule can not be furnished in such case, and the reopening of cases settled for years past can not be granted on the mere averment of an error having been committed. *William B. Foster* (Sec. Schurz), 4 P. D. (o. s.), 405.

It is an established rule of the Department not to disturb an adjudication by a former administration except upon the

10. **As to disability and rating**—Continued.

most conclusive evidence that error has been committed; and where, in a case like the present, the question is one of judgment as to the proper estimate of the extent of a disability, and the rate of pension allowed conforms to the degree of disability reported by the examining surgeons, it is not probable that any evidence could be presented which could be accepted as sufficient to warrant a readjudication of the claim to allow a higher rate; and the ratings will not be disturbed herein. *Joseph W. Holman* (Sec. Teller), 9 P. D. (o. s.), 271.

Where an error in rating is patent to whoever reads the evidence, it will be adjusted, although made long since by a previous administration and sanctioned by subsequent action; but where the question is one of judgment, merely, depending upon the weight of evidence, the Department will not allow the opinion of to-day to overturn that of yesterday. *James S. Coleman* (Sec. Teller), 14 P. D (o. s.), 239.

On application for rerating, a former adjudication of the Department will not be disturbed except upon the most conclusive evidence that an error was committed therein. *Noah N. Tyner* (Asst. Sec. Hawkins), 1 P. D., 21; *Zenas Hamilton* (ibid.), 2 P. D., 217.

In 1885 the Department held on appeal that the pensioner had been so disabled since 1866 as to require regular aid and attendance, and directed that his pension, originally allowed from 1863, be rerated accordingly, as provided by law. Pension was then rated at \$25 from 1866, \$31.25 from 1872, \$50 from 1874, and \$72 from 1878, the last increase being stated to be under the act of June 16, 1880. No claim was filed under the act of June 18, 1874: *Held*, That rating at \$72 was unauthorized, both by law and by said departmental decision, and is such an error as should be corrected. *Wallace G. Bone* (Asst. Sec. Hawkins), 2 P. D., 310.

The Department will not disturb former pension ratings upon a mere difference of opinion as to the correctness of the same, nor will it agree to a rerating unless there appears in the papers a manifest error in the former action of the Department, involving a violation of law or an indisputable injustice to the soldier. The ratings, based upon former adjudications of a claim, are held as a rule to be res adjudicata. *John Houck* (Asst. Sec. Bussey), 3 P. D., 176.

It is a well-established rule of the Department not to increase or reduce rates of pension long since allowed and accepted where the propriety of the action appealed from is a matter of

10. As to disability and rating—Continued.

opinion merely and a manifest indisputable error in the rating can not be shown. *James M. Marshall* (Asst. Sec. Reynolds), 8 P. D., —.

See also APPEALS; FEE; FRAUD AND MISTAKE; JURISDICTION; RECONSIDERATION; RERATING.

RESERVED LIST (NAVY).

See RETIRED OFFICERS.

RESTORATION.

1. Under section 4719, Revised Statutes, generally.
 - (a) *Medical evidence.*
 - (b) *What is not a satisfactory accounting for failure to claim.*
2. When dropping was based on unreliable testimony.
3. When original allowance is found to have been erroneous.
4. When dropped on account of disloyalty.
5. Commencement.
6. Rating.
7. Adjudication of claim.
8. Under act of June 27, 1890.

1. Under section 4719, Revised Statutes, generally.

It is not necessary, on an application to have a name restored to the pension roll, where a pensioner had been dropped because of nonclaim of pension for three years, to show the applicant was originally entitled to the pension, but he must show (1) a satisfactory reason for his failure to claim his pension, and if he was a pensioner who was not exempt from biennial examination, also, by medical evidence, (2) continuance of his disability. *Patrick Welch, alias Connally* (Asst. Sec. Hawkins), 2 P. D., 328.

No money in the way of pension can be paid to any person whose name has been dropped from the roll under section 4719, Revised Statutes, until that right to receive the same be revived, and the termination of the right to receive deprives a claimant of arrears, as well as of future pension, until said right be reestablished upon certain conditions of proof. *Ibid.* (Asst. Sec. Bussey), 3 P. D., 126.

(a) Medical evidence.

A pensioner failed to draw pension and failed, as prescribed by section 4719, Revised Statutes, to furnish medical evidence of the continuance of his disability. The action of the office in dropping name from rolls is approved. *John C. Williams* (Sec. Schurz), 7 P. D. (o. s.), 104.

1. Under section 4719, Revised Statutes—Continued.**(a) Medical evidence—Continued.**

Section 4719, Revised Statutes, does not require that an applicant thereunder for restoration should furnish medical evidence as to the continuance of his disability covering the whole period during which biennial examinations were required. *Frank E. Pickett* (Asst. Sec. Bussey), 5 P. D., 65.

Under section 4719, Revised Statutes, evidence of a medical character as to continuance of disability is an absolute necessity in establishing a claim for restoration if claimant was originally not exempt from biennial examination. *Mark G. Campbell* (Asst. Sec. Reynolds), 8 P. D., 203.

(b) What is not a satisfactory accounting for failure to claim.

The claimant in this case ceased to draw her pension as widow in 1870, and made no claim therefor until 1877. During this period she lived with one Wells, but denies that a marriage ever existed: *Held*, That under section 4719, Revised Statutes, her application for restoration is not accompanied by evidence satisfactorily accounting for the failure to claim such pension, and the presumption that a marriage took place prevails under said section, and the rejection is affirmed. *Margaret Nixon* (Asst. Sec. Reynolds), 7 P. D., 171.

The alleged loss of pension certificate and discharge papers in 1882 is not a satisfactory explanation of failure to claim pension from 1870 to 1889. *Mark G. Campbell* (Asst. Sec. Reynolds), 8 P. D., 203.

2. When dropping was based on unreliable testimony.

When it is shown that the testimony on which a widow pensioner was dropped from the rolls for adulterous cohabitation was unreliable and inspired by malice, the pension was restored. *Addie A. Crofoot* (Asst. Sec. Hawkins), 1 P. D., 391.

3. When original allowance is found to have been erroneous.

If, under a claim for restoration, on reexamination of the evidence upon which the pension was originally granted, the fact is developed that the pensioned disability was not incident to the service, and that therefore the claim was improperly allowed in the first instance, the claim for restoration should be rejected. *Alger J. Baldwin* (Actg. Sec. Cowen), 1 P. D. (o. s.), 117.

Where, after granting pension, the testimony on which it was allowed is impeached by testimony taken on special investigation, the date of the soldier's death especially being disproved, the date of his death (if he be dead) being not

3. When original allowance is found to have been erroneous—
Continued.

shown, the action of the office declining to restore name to roll is approved. *Mary M. Dougherty* (Sec. Schurz), 7 P. D. (o. s.), 99.

4. When dropped on account of disloyalty.

There is no authority of law for restoring to the rolls a pensioner who is dropped therefrom under the act of February 4, 1862, relating to disloyalty. *Agnes Wheeler* (Sec. Cox), 7 L. B. P., 18.

The privilege of making a claim for restoration where a pensioner was dropped from the rolls under the act of February 4, 1862, on account of disloyalty, is a personal one of the pensioner's, and in case of his or her death does not descend to heirs or representatives. *Executor of Ann B. Johnson* (Sec. Cox), 7 L. B. P., 69.

A pensioner pensioned on account of wounds received in the war with Mexico whose name was stricken from the roll on account of his alleged disloyalty, can not have his name restored to said roll under the act of March 9, 1873, but can only have such pension restored on proof that such action was not in consonance with the facts and the law; and upon proof of such pensioner's loyalty to the Government his name must be restored to the roll from date of last receipt of pension. *James A. Furley* (Asst. Sec. Bussey) 3 P. D., 167.

5. Commencement.

Where a special act restoring a pensioner's name to the rolls does not specify the date of commencement, pension should be restored from date of last payment; but in cases of original pension granted by special act which does not specify the date of commencement, pension should commence from the date of the act. *Margaret L. Bybee* (Sec. Delano), 1 P. D. (o. s.), 161.

A widow was pensioned from the death of her husband, and remarried. The children were pensioned from the date of such remarriage, and the pension was paid until the youngest child became 16 years of age. It afterwards transpired that the remarriage of the widow was void: *Held*, That her pension should be restored from the date the youngest child became 16 years of age. *Cyrenius Giles* (Sec. Schurz), 6 P. D. (o. s.), 235.

Where a party incurs a disability in one service and subsequently reenlists and deserts from another: *Held*, That right to pension accrued on the date of his discharge from the service in which the disability was incurred, and that when claim for restoration is established the pension should be allowed from the date his pay for military service ceased. *Benjamin Robbins* (Sec. Schurz), 6 P. D. (o. s.), 486.

6. Rating.

Where pensioner was receiving \$8 per month for disability incurred while a soldier in the Mexican war and his name was dropped from the rolls on account of his enlistment in the Union Army during the late rebellion, the action of the office in renewing pension from date of dropping at less rate than originally pensioned, deducting for period he was in the second service, was not error. *Barnabas Gaffney* (Sec. Schurz), 6 P. D. (o. s.), 398.

Upon the restoration to the pension roll of a name unlawfully dropped therefrom, a reduction of the rate of pension for the period during which the same was so unlawfully withheld is error, unless it be clearly shown that the disability during the period in question did not entitle pensioner to the rate formerly allowed. *William B. Walton* (Asst. Sec. Reynolds), 8 P. D., 19.

7. Adjudication of claim.

Where a suspended pensioner was restored at a less rate, a subsequent claim for allowance at the original rate is not a claim for increase, as contemplated in section 4698½, Revised Statutes, but should be adjudicated as a claim for restoration. *E. P. Shaw* (Actg. Sec. Cowen), 2 P. D. (o. s.), 485.

The adjudication of a claim for restoration to a rate from which claimant had been reduced, as a claim for increase is error. *Thomas Mallon* (Asst. Sec. Reynolds), 8 P. D., 208.

8. Under act of June 27, 1890—Declarations.

Pension was granted under the act of June 27, 1890, and subsequently pensioner's name was dropped from the rolls. In a claim for restoration he failed to state that he had served ninety days and received an honorable discharge. *Held*, As sufficient data were furnished in the declaration to establish claimant's identity, that he claimed restoration on account of the same causes of disability and that the omission had been supplied in his original declaration, which was a part of the record history of the case, the declaration should be accepted as sufficient. *Theodore Chircaden* (Asst. Sec. Reynolds), 8 P. D., 204.

See also ACCRUED PENSION; ADULTEROUS COHABITATION; COMMENCEMENT; EVIDENCE (Certificate of disability); FRAUD AND MISTAKE.

RESULTING DISABILITY.

See INCREASE.

RETIRED OFFICERS.

1. Section 4724, Revised Statutes, application of.
2. Navy.
3. Under general law and act of June 27, 1890—widows.
4. Under acts of August 29, 1890, and March 3, 1891.

1. Section 4724, Revised Statutes, application of.

Section 4724, Revised Statutes, applies only to invalid and not to service pensions. (Concurred in on submission to the Assistant Attorney-General for the Interior Department. Overrules former decision, L. B. "Qa," 98.) *Theodore J. Eckerson* (Asst. Sec. Hawkins) 2 P. D., 187.

On a subsequent motion, made by the Commissioner of Pensions, for a review, Secretary Vilas adhered to above holding, 2 P. D., 309.

2. Navy.

Officers on the reserved list in the Navy continue to be officers of the Navy, as they draw pay and are subject to be put on active duty drawing full pay (8 Op. Atty. Gen. 235). *Widow of James M. Watson* (Sec. Teller), 9 P. D. (o. s.), 219.

When not engaged upon active duty an officer upon the retired list of the Navy may properly be regarded in the same light, for pension purposes, as if upon leave of absence or on furlough; but if such officer contract a disability while employed upon any duty to which he had been assigned by authority of law, and his death result therefrom, the right of his widow to pension should be decided, so far as the question of the origin of the death cause is concerned, irrespective of the fact that he was at the time of such origin borne upon the retired list of officers. *Widow of James M. Watson* (Sec. Teller), 9 P. D. (o. s.), 219.

3. Under general law and act of June 27, 1890—Widows.

While an officer on the retired list can not acquire pensionable status, nor his widow, under the general law, yet she is pensionable under the act of June 27, 1890. Citing *Mary E. Gresham*, 6 P. D., 84. *Widow of Hamilton M. Tallman* (Asst. Sec. Bussey), 6 P. D., 261.

4. Under acts of August 29, 1890, and March 3, 1891.

Section 2 of the act of August 29, 1890, and the second proviso of the first section of the act of March 3, 1891, do not bar an officer on the retired list in the Army from receiving the pension granted for any period when he was not an officer or soldier in the Army in the service of the United States. *John Pulford* (Asst. Sec. Reynolds), 7 P. D., 412.

4. Under acts of August 29, 1890, and March 3, 1891—Cont'd.

Officers or soldiers on the active or retired list are not entitled to pension. (Section 4724, Revised Statutes, act of August 29, 1890; section 2, act of March 31, 1891. Opinion of Attorney-General, November 25, 1896.) *Ibid.*, 8 P. D., —.

RETROACTIVE LAWS.

See ADULTEROUS COHABITATION; INCREASE; REBATING; SUSPENSION.

REVENUE CUTTERS.

See BOUNTY LAND (Service); SERVICE.

REVENUE MARINE.

See SERVICE.

REVOLUTIONARY WAR.

1. Act of May 31, 1830.
2. Act of June 7, 1832.
3. Act of July 4, 1836.
4. Children—when not entitled.
5. Termination of—act of March 18, 1818.

1. Act of May 31, 1830.

The act of May 31, 1830, seems to be directed against the second section of the act of May 15, 1828, which is confined to the "surviving officers of the army of the Revolution, etc., entitled to half pay," and does not extend to the noncommissioned officers, musicians, or privates of that army. *Atty. Gen. Berrien*, 2 Op., 350.

2. Act of June 7, 1832.

The act of June 7, 1832, granting pensions for Revolutionary services, is not confined to resident American citizens, the only class excluded from the benefit of the law being foreigners who held commissions in the American army. *Atty. Gen. Taney*, 2 Op., 539.

The exclusive words in the first section of the act of June 7, 1832 (that those entitled under the act of May 15, 1828, are not entitled under the later act), ought to be confined to cases in which the party claims *in the same character* in which he is entitled under the act of 1828, and for the same description of service; and where an applicant, as in the case presented, was not entitled, under the law of 1828, to pension as *commissary* he was not excluded from a pension, on account of services in that character, under the act of 1832, and is entitled to pension as commissary upon relinquishing his claim as ensign under the act of 1828. *Atty. Gen. Taney*, 2 Op., 568.

3. Act of July 4, 1836.

Section 3 of the act of July 4, 1836, does not provide for the widows of officers and soldiers who have died since the date of said act; and does not extend to the widows of officers and soldiers who were living at the time when the act of June 7, 1832, was passed (the latter holding being made "with some hesitation"). *Atty. Gen. Butler*, 3 Op., 203.

4. Children—when not entitled.

(1) Where soldier or widow of soldier, in his or her lifetime, made claim for pension which was disallowed and afterwards found to be admissible under existing laws, the claimants having died, the children are not entitled. (2) In case where pension was allowed and after decease it was found that the pensioner was entitled to a higher rate, the children are not entitled to such increased rate. (3) In a case where pension has been allowed and application for increase disallowed, and it afterwards appears that the adverse action was erroneous, the children are not entitled to the increase. *Atty. Gen. Bates*, 10 Op., 336.

5. Termination of—act of March 18, 1818.

The Revolutionary war, within the meaning of the pension law of March 18, 1818, terminated at the ratification of the treaty of peace, April, 1783. *Atty. Gen. Wirt*, 1 Op., 701.

See also PAYMENT OF PENSION.

RIGHT TO PENSION.

See RESTORATION, 1 and 5; COMMENCEMENT; VESTED RIGHT.

RULES.

Rule 1.

See APPEALS, 2 and 11.

Rule 2.

See APPEALS, 3; PRACTICE.

Rule 6.

See APPEALS (SUBTITLE 16, as to rate).

Rule 12.

See ATTORNEYS.

Rule 13.

See ATTORNEYS.

Rule 16.

See ATTORNEYS.

RULINGS (COMMISSIONER'S).**Ruling 55.**

See EVIDENCE, 35 (g).

Ruling 74.

See DECLARATIONS, 7.

Ruling 105.

See DEPENDENT RELATIVES, 5 (d).

Ruling 107.

See DISLOYALTY, 3 (a).

Ruling 110.

See ACCRUED PENSION, 10 (b).

Ruling 116.

See ACCRUED PENSION, 10 (b).

Ruling 124.

See ATTORNEYS, 45.

Ruling 131.

See SEQUENCE, 3 (a).

Ruling 154.

See ADULTEROUS COHABITATION, 7.

Ruling 222.

See RATING 2 (d),

Ruling 244.

See WAR OF THE REBELLION.

Ruling 246.

See REIMBURSEMENT, 4 (a).

SANTA FE TRADERS.

See BOUNTY LAND (Service).

SCOUTS.

See COMMENCEMENT (Special act).

SCRIP.

See BOUNTY LAND.

SEALS.

See COURTS (Of record).

SEAT OF WAR.

See BOUNTY LAND (Service).

SECRETARY OF THE INTERIOR.

See ACCRUED PENSION; ATTORNEYS; JURISDICTION.

SECRETARY OF THE NAVY.

See LIMITATIONS.

SECRETARY OF WAR.**Rules and orders of—effect—Army Regulations.**

Rules and orders as to the administration of the military establishment of the United States, publicly promulgated by the Secretary of War, must be received as the acts of the Executive, and can not be questioned or defied because they may be thought unwise or mistaken. *United States v. Eliason*, 16 Peters, 291. The Army Regulations, made by reason of the authority conferred by Congress, have the force of law. *Gratiot v. United States*, 4 Howard, 80; 16 Op. Atty. Gen., 39. *Cyrus Oakes* (Sec. Teller), 9 P. D. (o. s.), 437.

SENILITY.

See DECLARATIONS (Under act of June 27, 1890); DISABILITY.

SEPARATION.

See DIVORCE.

SEQUENCE.

1. Generally.
2. Evidence and proof.
3. Medical referee's opinion.
 - (a) *Service and nonservice causes of disability—Ruling 131.*
4. Secondary and contributory causes.
5. Particular sequences.
 - (a) *Eyes, disease of, and smallpox.*
 - (b) *Heart disease and rheumatism.*
 - (c) *Heart disease and chronic diarrhea.*
 - (d) *Heart disease and injury to side.*
 - (e) *Obesity and loss of leg.*
 - (f) *Phthisis pulmonalis and wound of leg.*
 - (g) *Rheumatism and measles.*
 - (h) *Typhoid fever and measles or chronic diarrhea.*
6. As affected by vicious habits.

1. Generally.

The expression "disabled by wounds or otherwise" (used in section 14 of the act of March 16, 1802) refers not only to direct and instantaneous disabilities, but also to disabilities which are plainly, though remotely, the incident and result of the military profession; and it would not be going too far to say that in every case where an officer or private loses his health while in the service to such a degree as to be disabled from performing his duty any more, he is contemplated *prima facie* as an object of this charitable relief from the Legislature. *Atty. Gen. Rush*, 1 Op., 181.

2. Evidence and proof.

It is not required that the relation of cause and effect be established beyond a reasonable doubt, but in accordance with the rules of probability; and it is sufficient if it be proved by circumstantial evidence which produces moral conviction in the mind equivalent to that which is the result of positive and direct evidence. Citing *Robert G. Mosby*, guardian of minors of *Washington Slade*, September 12, 1888, L. B. Bb., 144 (unpublished). *Widow of Francis O. Miller* (Asst. Sec. Hawkins), 2 P. D., 214.

3. Medical referee's opinion.

The opinion of the medical referee will, in accordance with the general rule of the Department in like cases, be held conclusive as to what disabilities may be accepted as results of a pensioned injury. *George S. Newton* (Asst. Sec. Hawkins), 2 P. D., 144.

See also **DISABILITIES; MEDICAL REFEREE.**

(a) Service and nonservice causes of disability—Ruling 131.

Where the evidence shows a disability is due both to a service cause and to a cause existing out of service, the medical referee should, under Ruling 131, decide what part of such disability is due to the service cause, if the disability is capable of being so differentiated, and should rate same accordingly. *John Scyoc* (Asst. Sec. Bussey), 6 P. D., 191.

4. Secondary and contributory causes.

A soldier was pensioned for epilepsy. While in a fit, and without any fault or improper conduct on his part, he fell into the fire and was badly burned. *Held*, That he is entitled to increase of pension because of the disability resulting from the burns thus received. *James P. Reeves* (Sec. Schurz), 4 P. D. (o. s.), 153.

4. Secondary and contributory causes—Continued.

Where claimant was pensioned at three-fourths disability on account of varicose veins, and years subsequent to discharge received a gunshot wound in leg from which gangrene ensued, necessitating amputation of limb, the testimony of the surgeon who performed the amputation expressing the opinion that the coextensive varicose condition contributed to the obstruction of the circulation and excited the subsequent gangrene: *Held*, That the connection alleged between the preexisting condition of limb and amputation from wound is a mere matter of conjecture, and claim for increase on account of amputation is not allowable under the laws. *John Spalding* (Sec. Schurz), 8 P. D. (o. s.), 16.

To establish secondary or contributory cause of disability, or of consequential damages, the claimant, before becoming entitled to increase of pension, must prove that the accident resulting in said disability was directly caused by his previously incurred pensionable disability. *Henry Mensing* (Asst. Sec. Hawkins), 1 P. D., 336.

Claimant was pensioned for disease of right leg and filed a claim for increase of pension on account of disease of left leg. The medical referee held that disease of left leg was not the result of disease of right leg, for which pensioned, but that the condition of system which induced the one may have and probably did cause the other. *Held*, That the disease of right leg is inseparable from the disease of left leg, and the condition due to both is pensionable. *John Ailer* (Asst. Sec. Bussey), 3 P. D., 251.

It has been uniformly held that to entitle to pension on account of an accident resulting in disability or death it must be proved to have been caused directly by the previously incurred pensionable disability, and not by negligence, carelessness, or undue risk on the part of the soldier, or by neglect of that care and caution which common prudence would dictate should be exercised by one in a diseased or crippled condition. *Widow of Frank Petersdorf, alias John Smith* (Asst. Sec. Bussey), 4 P. D., 96.

In cases involving the right to pension for secondary or contributory causes of disability or of death, the Department uniformly holds that there must be conclusive evidence showing that the alleged disability or death was directly caused by the previously incurred disability, and was not the result of either negligence or carelessness nor of undue risk on the soldier's part. *Elizabeth Edgell, widow* (Asst. Sec. Bussey), 5 P. D., 96.

See also *Rebecca Maness*, CONTRIBUTORY NEGLIGENCE.

5. Particular sequences.**(a) Eyes, disease of, and smallpox.**

It being shown that the soldier's eyes were good prior to an attack of smallpox in service, and that subsequently thereto his eyes began to fail and the failure or disease has continued, disease of eyes, being a probable result of smallpox, as held by the medical referee, may be accepted as due thereto in this case. *Daniel M. Redding* (Asst. Sec. Hawkins), 2 P. D., 167.

(b) Heart disease and rheumatism.

The Department accepts the statements of claimant's family physician that his existing affection of the heart is the result of rheumatism. *Heinrich Schoening* (Asst. Sec. Bussey), 3 P. D., 162.

See also decision following.

(c) Heart disease and chronic diarrhea.

Disease of heart is accepted as a result of chronic diarrhea and rheumatism. *John Wallace* (Asst. Sec. Hawkins), 1 P. D., 16.

(d) Heart disease and injury to side.

Valvular disease and hypertrophy of heart are not accepted as due to an injury to the side and stomach caused by a fall from a horse twenty years ago. *James H. Rainey* (Asst. Sec. Reynolds), 8 P. D., 77.

(e) Obesity and loss of leg.

Where increase of pension is based on obesity resulting from loss of leg: *Held*, That such connection can not be established by conclusive proof, and it is not sufficiently probable to warrant allowance of increase of pension. *George Clayton* (Sec. Schurz), 5 P. D. (o. s.), 121.

See also DISABILITIES.

(f) Phthisis pulmonalis and wound of leg.

Where the soldier was pensioned for wound of lower part of left leg and died of phthisis pulmonalis nearly six years after date of discharge, it was held that there was no connection between the wound and the fatal disease. *Henrietta Flacker* (Sec. Schurz), 6 P. D. (o. s.), 339.

(g) Rheumatism and measles.

Whether rheumatism is a result of measles, as alleged, is a purely medical question, and the opinion of the medical referee thereon is accepted, under a long line of decisions, as final and conclusive. *Arad P. Brown* (Asst. Sec. Hawkins), 2 P. D., 88.

(A) Typhoid fever and measles or chronic diarrhea.

Following the opinion of the medical referee, typhoid fever can not be accepted as the sequence of a previously diseased condition caused by measles or chronic diarrhea. *Elizabeth A. Newhall, widow*, (Asst. Sec. Hawkins), 1 P. D., 34.

6. As affected by vicious habits.

The record showing treatment for diarrhea, but the testimony on special examination failing to show the existence of any diarrhea during twenty years subsequent to discharge, and showing that during those years the claimant led a grossly immoral and intemperate course of life, the fair presumption is that he had completely recovered at discharge from the diarrhea shown of record in service, and that his subsequent intemperate habits produced the second attack of the disease twenty years thereafter; and the latter disease is too remote from the former to be accepted as a sequence under the circumstances shown. *William Waterbury* (Asst. Sec. Hawkins), 2 P. D., 53.

See also COMMENCEMENT; DEATH CAUSE; DECLARATIONS (Act of June 27, 1890—Senility); DISABILITY; MEDICAL REFEREE; ORIGIN.

SERVICE.

1. Generally.
2. Evidence of.
 - (a) *Parol evidence.*
 - (b) *Record evidence.*
 - (1) *War Department's jurisdiction as to its records.*
3. Length of service.
 - (a) *Issue of bounty-land warrant not conclusive of.*
 - (b) *Period for which paid governs generally.*
 - (c) *Records of the War Department accepted.*
 - (d) *War of 1812.*
 - (e) *War of the rebellion.*
 - (1) *Under act of July 14, 1862.*
 - (2) *Under act of June 27, 1890.*
4. Muster into.
 - (a) *When essential to put a soldier in.*
 - (b) *When not essential.*
5. General service.
6. In Indian wars.
 - (a) *Act of July 27, 1892.*
7. Patriot war.
8. In war of 1812.
 - (a) *Generally.*
 - (b) *Of aides-de-camp.*
 - (c) *Of waiters.*

9. In the war with Mexico.
 - (a) *Must have been at the seat of war.*
 - (b) *What considered service at the seat of war.*
 - (c) *What is not.*
10. In the war of the rebellion.
 - (a) *Generally.*
 - (b) *Commencement of, for pensionable purposes.*
 - (c) *Termination of, for pensionable purposes.*
11. Additional paymasters.
12. Cadets, service as.
13. Captain's clerk, service as.
14. Civilian employees and nonenlisted men.
 - (a) *Generally.*
 - (b) *Enrolling officers.*
 - (c) *Medical, Subsistence, and Quartermaster's Departments.*
 - (d) *Mississippi Marine Brigade.*
 - (e) *Packhorsemen.*
 - (f) *Teamsters.*
15. Contract and civil surgeons.
16. Drafted men and substitutes.
17. Hospital and other stewards.
18. Pay clerk and paymaster's clerk.
19. Powell's Battalion.
20. Privateersmen.
21. Professor in Military Academy.
22. Provost-marshal.
23. Purser's clerk.
24. Rejected recruit.
25. Revenue marines.
26. War vessels.
27. Under act of March 25, 1862.

1. Generally.

Warriors of the Six Nations who were in the service of the United States were enlisted men and are entitled to pension. *Isaac Jimison* (Actg. Sec. Bell), 6 P. D. (o. s.), 76.

A person enlisted under the age recognized for military service and discharged under a writ of habeas corpus was in the service. *Charles T. Loomis* (Asst. Sec. Bussey), 5 P. D., 35.

In order to constitute a valid enlistment there must be not only a tender of service on the part of the person desiring to enlist, but an acceptance of the same by the Government acting through some duly authorized officer or agent. *Hannah Chapman* (Asst. Sec. Reynolds), 7 P. D., 385.

It appearing from the record that the soldier's organization was not disbanded until after the time he alleges he incurred disease of eyes, and that he remained with said organization until, and was released therefrom only at, its disbandment, it is

1. Generally—Continued.

held rejection of his claim for pension on the ground that said disease of eyes originated subsequent to discharge was erroneous under section 4701, Revised Statutes, and decision of the Department in case of George W. Hill, 7 P. D., 236. Rejection is set aside accordingly, and adjudication directed as to the merits of the claim. *William M. Guy* (Asst. Sec. Reynolds), 7 P. D., 484.

2. Evidence of**(a) Parol evidence.**

Claimant having been allowed bounty land upon the ground of his having served as a volunteer at the battle of Plattsburg, he should be regarded as having been in the service of the United States within the provisions of the act of March 9, 1878, and entitled to pension thereunder, unless it be shown that the warrant was improperly issued. *Israel Barber* (Sec. Schurz), 5 P. D. (o. s.), 445.

There being no record evidence of service of company, parol evidence will not be received to prove individual service. *Betsey Farnsworth* (Sec. Schurz), 5 P. D. (o. s.), 89.

Under the provisions of sections 3 of the acts of March 3, 1855, May 14, 1856, and March 9, 1878, as construed by this Department, parol evidence can not be admitted as proof of the service of a soldier unless there is record evidence of the organization in which he served. Bounty-land warrant was, in this case, therefore, improperly granted, as there is no record evidence of Capt. Moses Colton's company, alleged to have rendered service in 1814 in connection with the invasion of Plattsburg; and if there were record evidence of such service there could be no title to pension under the last-named act, as the alleged actual service of claimant's husband was but three days. *Phæbe Goodrich* (Sec. Schurz), 5 P. D. (o. s.), 224.

Parol evidence can not be admitted to establish a claim for pension or bounty land unless there is record evidence of the service of the organization to which the claimant belonged. *Harrison Welton* (Sec. Schurz), 5 P. D. (o. s.), 279.

See also BOUNTY LAND.

Parol evidence can not be accepted, in claims for pension (war of 1812) where the record shows mileage was included in record of service, to controvert the record of travel. *Rosa Young* (Sec. Schurz), 6 P. D. (o. s.), 425.

Where the record shows service by a substitute from August 25, 1812, to February 28, 1813, payment having been made to the substitute, it must be regarded as conclusive as to

2. Evidence of—Continued.

(a) Parol evidence—Continued.

to the fact of the service by either the principal or the substitute during the entire period mentioned; but payment to the substitute is not necessarily conclusive evidence that the principal rendered no part of the service. The fact of no payment to principal is merely negative, and there having been filed in the case a contract as to service between the principal and substitute, the genuineness of which is not questioned, corroborated by parol testimony, executed October 12, 1812, the evidence is deemed sufficient to show service of the principal and to controvert the record which negatively indicates that the principal rendered no service, so far as to show that said principal did serve in the war of 1812 for a period of more than fourteen days, or from August 25, 1812, to date of contract. *Nancy Riley* (Sec. Schurz), 6 P. D. (o. s.), 344.

(b) Record evidence.

Sixty days' service in the war of 1812 may be shown by the records of the Third Auditor of the Treasury of payments made to the soldier. *Zenas W. Barker* (Actg. Sec. C. B. Smith), 1 P. D. (o. s.), 240.

State auditors' certificates should not be accepted as controverting the records of the Third Auditor's Office, as such certificates and original rolls in State offices are made up, in some instances, of affidavits of interested parties. *John Hansford* (Actg. Sec. Cowen), 2 P. D. (o. s.), 111.

Application for pension under act of March 9, 1878, was rejected upon the ground that there is no record evidence of the organization in which service is alleged. Action of office is reversed and claim ordered to be allowed upon the ground that the service alleged is an historical event. *Edmund Dudley* (Sec. Schurz), 5 P. D. (o. s.), 463.

The rejection of this claim for service pension under the act of March 9, 1878, is affirmed, there being no record or other sufficient evidence that claimant rendered the required service of "fourteen days in the war with Great Britain in 1812" as a substitute. *William Young* (Asst. Sec. Reynolds), 8 P. D., 35.

The report of the War Department showing that the Hawkins-Taylor commission credited claimant with but two months' (sixty-one days) service during the war of the rebellion is conclusive of the question of service in this case. Such service having been less than ninety days, his claim under the second section of the act of June 27, 1890, was properly rejected on that ground. *Phillip John* (Asst. Sec. Reynolds), 8 P. D., 64

2. Evidence of—Continued.

(b) Record evidence—Continued.

The report of the Hawkins Taylor Commission is final as to length of a soldier's service in cases arising under the act of March 25, 1862. *James L. Hicks* (Asst. Sec. Reynolds), 8 P. D., —.

(1) War Department's jurisdiction as to its records.

The enlistment and discharge of soldiers, whether regulars, volunteers, or militia, pertains exclusively to the business of the War Department, and no evidence should be accepted by the Pension Office to controvert the rolls and records of that Department or to supply defects in such records. When a claimant alleges enlistment in a regiment which was accepted into the United States service during the late war and it appears from the report of the proper officer of the War Department that there is no evidence on file of his enlistment, he or his attorney should be advised of such report, and informed that correspondence concerning the alleged defect should be directed to that Department; and if evidence should come into the possession of the Pension Office showing, or tending to show, that a defect or error exists in any roll or record in the War Department, such evidence should be referred to that Department for such action as may be deemed proper; or, where a claimant has not been discharged from the service of the United States, he should be referred to the War Department and action upon his claim be suspended until he has obtained a discharge. *James H. Carpenter* (Sec. Kirkwood), 8 P. D., (o. s.), 452.

The determination of the question whether the husband of the claimant was a soldier in the organization referred to (Captain Moffatt's company of South Carolina Volunteers, war with Mexico) pertains to the business of the War Department, and no evidence other than the report of the proper officer of that Department should be received by the Pension Office as proof of his service. *Ellen Moore* (Sec. Kirkwood), 8 P. D. (o. s.), 475.

It is the province of the War Department to determine whether the person on whose account this claim is made was in the military service of the United States, and no action looking to the adjudication of the claim can be taken until proof shall have been furnished to the War Department that Le Fevre was in the military service of the United States and a report to that effect shall have been received from that office. *Ann Parker, widow of George Le Fevre* (Sec. Kirkwood), 9 P. D. (o. s.), 81.

2. Evidence of—Continued.

(b) Record evidence—Continued.

The records of the War Department, as far as they go, must be taken as furnishing the correct history of the military service of a claimant for pension, and it is in the power of neither the Commissioner of Pensions nor the Secretary of the Interior to alter such records. If error exists in said records it must be corrected, if at all, by the proper officer of the War Department. *Samuel Everman* (Asst. Sec. Hawkins), 1 P. D., 418.

Claimant entered the service in the place of his brother and assumed his brother's name, serving more than thirty days. The record of the War Department shows that he was accepted into the service in the manner specified, and that his service is regarded by that Department as separate and distinct from that of the principal (his brother), and as having been entered upon under an implied contract equivalent to an enlistment and muster into the service of the United States: *Held*, That his service meets the requirements of the statute, and he is entitled to pension thereunder. *James M. Griffin* (Asst. Sec. Reynolds), 8 P. D., 57.

3. Length of service.

(a) Issue of bounty-land warrant not conclusive of.

When it is shown that a soldier, on account of whose service pension under the act of January 29, 1887, is claimed, did not serve for a period of sixty days in Mexico, en route thereto, nor on the coast or frontier thereof, the fact that a bounty-land warrant had been issued to him for such service does not establish a pensionable service under said act. *Julia B. Hollywood* (Asst. Sec. Reynolds), 8 P. D., 106.

See also EVIDENCE.

(b) Period for which paid governs generally.

The period for which the soldier was paid determines the length of service. *Winnie Hundley* (Actg. Sec. Joslyn), 13 P. D. (o. s.), 541.

Where, allowing one day for each 20 miles traveled going to and returning from the rendezvous, and including the time spent at the rendezvous, a claimant's service was less than sixty days, he is not pensionable under the act of January 29, 1887. *Robert W. P. Muse* (Asst. Sec. Hawkins), 2 P. D., 180.

The rule that the period of pay determines the period of service is unalterable, having governed the War Department from the date of the Government's foundation; and this Department is governed by the rule, as it can not go beyond the records of that Department. Citing *Albert K. Ransom*, 5 P. D., 183; *Randolph M. Manley*, *ibid.*, 295. *Sarah A. Kersey* (Asst. Sec. Bussey), 6 P. D., 1.

3. Length of service—Continued.**(b) Period for which paid governs generally—Continued.**

Period of pay determines the length of service under act of June 27, 1890. Citing Albert K. Ransom, 5 P. D., 183. *Washington H. Rogers, alias George Jones* (Asst. Sec. Bussey), 6 P. D., 170.

Soldier was granted bounty land in 1851 on the ground that he had "actually served one month," and was also allowed pension under the act of July 27, 1892, on the ground that he served thirty days in the Creek Indian war. The records show that he was enlisted and mustered in at Columbus, Ga., June 9, 1836, and mustered out with the company at the same place, July 7, 1836, and was allowed twelve days' travel pay, six from his home to the place of rendezvous and six from place of rendezvous to his home. His widow's claim was rejected on the ground of insufficient service: *Held*, (1) That under section 4701, Revised Statutes, the soldier's service for pensionable purposes did not necessarily end at date of muster out, but continued until the disbandment of the organization; (2) that the soldier's right to pension having been conceded and no question in regard thereto having been raised during his lifetime, the burden of proof is on the Government when it sets up the plea of insufficient service against the widow's claim; (3) that it has not been proved that soldier did not serve thirty days. *Margaret M. Swann* (Asst. Sec Reynolds), 8 P. D., 149.

(c) Records of the War Department accepted.

Rules adopted by the War Department as to length of service are clearly applicable in determining length of service in a bounty-land claim. *John Wells* (Sec. Harlan), 5 L. B. P., 395.

See also BOUNTY LAND.

Section 4701, Revised Statutes, limits the legal termination of service in any pension case to one or other of two possible dates only; that is, (1) to date of actual discharge for any other cause than expiration of term of service of the organization, and (2) to the date of disbandment of organization because of the expiration of the term of service. A determination of the commencement of service by the War Department from its records, after full consideration of the law and the facts, in any claim based upon service during or since the war of the rebellion, will be accepted by this Department as final. Cases of *Wilson v. United States*, 25 C. Cls. R., 339; *United States v. Johnson*, 124 U. S., 253, and *Same v. Moore*, 95 U. S., 760, cited. The rule that pay is coincident with and determines the period of service vacated and set aside, and decisions affirmative

3. Length of service—Continued.**(c) Records of the War Département accepted—Continued.**

thereof to that extent overruled. Cases of Ransom and Rogers, 5 P. D., 183, and 6 P. D., 170, respectively, considered in the connection. *George W. Hill* (Asst. Sec. Reynolds), 7 P. D., 235.

In computing the length of service to entitle soldier to pension, this Department accepts the records of the War Department as conclusive. *Cassie Thompson* (Asst. Sec. Reynolds), 8 P. D., 67.

The provisions of section 2433, Revised Statutes, are not applicable to the pension law of June 27, 1890, in ascertaining the length of service named in sections 2 and 3 of the act where the records of the War Department show the term of service. *Ibid.*

(d) War of 1812.

Soldier served fifty-five days prior to and thirty-three days after treaty of peace: *Held*, That this did not constitute sixty days' service in the war of 1812. *Elizabeth Chance* (Sec. Schurz), 4 P. D. (o. s.), 381.

In order to entitle to pension for service in the war of 1812 it must be satisfactorily shown, not only that the soldier rendered service, but that he served for at least fourteen days; and where the statements of witnesses and claimant are conflicting and contradictory, and, when taken in connection with the record, confusing, so that the length of service is not ascertainable therefrom, claim must be rejected. *Ezra D. Hetfield* (Asst. Sec. Hawkins), 2 P. D., 155.

(e) War of the rebellion.**(1) Under act of July 14, 1862.**

Continuous service until the end of the war should not be required in proving under claims for pension arising under section 10 of the act of July 14, 1862. *Robert S. Goodall* (Sec. Delano), 8 L. B. P., 443.

(2) Under act of June 27, 1890.

When soldier's service was compulsory, and in compliance with the sentence of a court-martial, and consisted of confinement at hard labor, with the loss of all pay and allowances due or to become due, he can not be held to have served in the military or naval service of the United States during the war of the rebellion within the meaning or intent of the act of June 27, 1890. *George W. Fleck* (Asst. Sec. Reynolds), 7 P. D., 343.

3. Length of service—Continued.

(e) War of the rebellion—Continued.

The record shows that appellant enlisted August 5, 1862, was captured the same month, and is reported on list of prisoners dated September 18, 1862, and on the muster roll of the company, dated December 31, 1862, as discharged at Camp Lew Wallace, but the cause and date of discharge are not given. *Held*, That as the record shows that he was discharged in 1862, he would be, on proof of disability incurred in the service and line of duty, pensionable under the general law, his declaration having been filed subsequent to July 1, 1880. That he is not pensionable under the second section of the act of June 27, 1890, until it is shown that he was in the service of the United States for a period of ninety days. That a special examination should be ordered to ascertain the date and cause of discharge. *Thomas Johnson* (Asst. Sec. Reynolds), 7 P. D., 491.

The length of service to entitle soldier to pension under act of June 27, 1890, is ninety days or more. *Cassie Thompson* (Asst. Sec. Reynolds), 8 P. D., 67.

4. Muster into.

(a) When essential to put a soldier in.

No one is entitled to pension under the laws providing for invalids who has not been mustered into the service and joined a regiment or corps. *Letter to Hon. John Holmes* (Sec. Calhoun), Pension Laws, etc. (1849), 90.

A recruit never mustered into the service of the United States has no pensionable status under the second section of the act of June 27, 1890. Citing cases of Florida Kennerly, 2 P. D., 265, and Cornelius Warren, 2 P. D., 278. *Andrew Goddard* (Asst. Sec. Reynolds), 7 P. D., 181.

See *William N. Davis*, *ibid.*, 333.

(b) When not essential.

A soldier's muster into service is not essential to entitle his widow to pension where he was duly enlisted and was only prevented from being mustered in by reason of sickness incurred subsequent to his enlistment and while under military orders and authority. *Sarah Jackson* (Sec. Usher), 5 L. B. P., 158.

A soldier who was duly enlisted, was in service eight months, and then rejected because of disability, is pensionable under the act of June 27, 1890, although never mustered in. *Simon P. Chambers* (Asst. Sec. Bussey), 6 P. D., 260.

4. Muster into—Continued.

(b) When not essential—Continued.

Under section 2 of the act of June 27, 1890, muster in is not essential to the pensionable status of a soldier who has been duly and regularly, according to military law, enlisted in the military service of the United States. Case of Simon P. Chambers, 6 P. D., 260, cited and affirmed. *William N. Davis* (Asst. Sec. Reynolds), 7 P. D., 333.

5. General service.

The fact that an enlisted soldier was assigned to and performed civil duties, as clerk to the adjutant, does not entitle him to pension during the period he was so employed. *William P. Reid* (Sec. Usher), 5 L. B. P., 153.

A pensioner who reenlists in the general service and is assigned to duty as clerk in the War Department is entitled to continuance of pension under the proviso of the act of April 30, 1844. *William Mulhall* (Sec. Delano), 8 L. B. P., 396.

Pension should not be granted to any person in general service nor the name of any person in general service continued on pension roll unless the proof is clear and satisfactory that such person is disabled and that his disability occasioned his employment in a lower grade or in a civil branch of the service. *Ibid.*, 451.

Widows of persons in the general service who die from a cause originating in the line of their duty as clerks in the War Department at Washington, D. C., are pensionable. Citing and following Josephine Plumer, March 23, 1872. *Johanna Whiting* (Sec. Delano), 2 P. D. (o. s.), 88.

Widows of general-service men employed in the War Department are entitled to pension if soldier died of disease contracted while in said service. *Johanna Whiting, widow of Harlow H. Whiting* (Sec. Delano), 2 P. D. (o. s.), 287.

The record evidence showing that the claimant's husband was enlisted for clerical duty in Washington (being employed in the Surgeon General's Office), during the performance of which duty he incurred, as alleged, his fatal disease, it is held he had no connection as a soldier with the post of Washington, and the case does not come within section 4694, Revised Statutes. *Mary M. Frisby* (Sec. Kirkwood), 9 P. D. (o. s.), 98.

An enlisted soldier who is assigned to duty in the Adjutant-General's Office at Washington, D. C., is not pensionable for any disability incurred in such service, as section 2 of the act of July 27, 1868 (now section 4694, Revised Statutes), requires

5. General service—Continued.

that disability must have been contracted while serving in the field or at a post, fort, or garrison. *Samuel McMonigle* (Sec. Teller), 13 P. D. (o. s.), 550.

A sergeant in the general service of the Adjutant-General's Office, employed as a clerk in the office of the Provost-Marshal-General, U. S. A., is a noncommissioned officer in the Army for pensionable purposes. *Brazil Bradley* (Asst. Sec. Bussey), 5 P. D., 112.

6. Indian wars.

This soldier, who was killed in an engagement with the Sioux Indians in August, 1862, was a volunteer enlisted soldier in the State militia of Minnesota, as shown by the records of the State adjutant-general's office; and as it is a matter of history that war then existed between the United States and the Sioux Indians, and the United States had, two days prior to said engagement, recognized the existence of such war and assumed the defense of the people by ordering Federal troops to that locality, the soldier's widow is pensionable under the third paragraph of the third clause of section 4693, Revised Statutes, although there were no Federal troops in said engagement and his service was not under orders of any Federal officer. *Johanna Luskey* (Sec. Chandler), 3 P. D. (o. s.), 311.

(a) Act of July 27, 1892.

Service, to give pensionable status under the act of July 27, 1892, must have been actual service in the wars named in said act. Service in the United States Army at a military post remote from the seat of war gives no title. *James Toal* (Asst. Sec. Reynolds), 7 P. D., 45.

Under the provisions of the act of July 27, 1892, period of service commences from the date when a claimant appeared at the place of battalion, regimental, or brigade rendezvous designated in proper orders, and ends at the date when he reached said rendezvous on his return, or (section 4701, Revised Statutes) the date of the individual discharge, or the date when the organization to which he belonged was disbanded. *Houston v. Moore* (3 Wheaton, 144; 4 U. S., 535). *David J. Bailey* (Asst. Sec. Reynolds), 7 P. D., 173.

Where the Government has neglected to make or keep any record of a soldier's enlistment, service, or discharge the soldier should be permitted, under section 3 of the act of July 27, 1892, to establish these matters by the best evidence obtainable. *Esther S. Williams* (Asst. Sec. Reynolds), 7 P. D., 327.

7. Patriot war.

Vermont militia are not entitled to bounty land for services in northern frontier disturbances or "patriot war" of 1838-39, growing out of an attempted Canadian rebellion against the British Government. The service was not in a war in which the United States was engaged, but was for the purpose of preserving the neutrality of the United States. The allowance of certain claims does not bind the Government to similar action in cases based upon the same or like state of facts. *James S. Wilson* (Sec. Schurz), 6 P. D. (o. s.), 385.

See also BOUNTY LAND.

8. In war of 1812.

(a) Generally.

Service must have been performed subsequent to June 18, 1812, and prior to February 17, 1815. *William De Peyster* (Sec. Delano), 8 L. B. P., 465.

Pension for service under act of March 9, 1878, based upon granting of land warrant, can not be denied because the service embraced allowance of travel not rendered within the period of the war of 1812. *James R. Abernathy* (Sec. Schurz), 6 P. D. (o. s.), 450.

Under an application for pension by widow of soldier, under act of February 14, 1871, where soldier enlisted May 12, 1812, service must be taken to commence from the date of the declaration of war, June 18, 1812. *Prudence M. Flint* (Actg. Sec. Bell), 7 P. D. (o. s.), 181.

Application for bounty land based upon service rendered subsequent to the date of the ratification of the treaty of peace (February 17, 1815) must be rejected, as section 2425, Revised Statutes, specifically requires service for a period of not less than fourteen days in any of the wars in which the United States have been engaged since the year 1790 and prior to the 3d day of March, 1855. *Samuel Davis* (Actg. Sec. Bell), 7 P. D. (o. s.), 186.

The Third Auditor of the Treasury reported that there were only thirteen regiments and six battalions of Georgia militia in the war of 1812, and that the two commissions submitted herein, dated April 6, 1808, and November 21, 1812, respectively, appointing this claimant lieutenant-colonel and brigadier-general in the Thirty-fifth Regiment of Georgia Militia, are of no value as establishing his service in said war, and as there are no records in said Auditor's Office of claimant's services in said war the claim can not be allowed. *Mary A. E. Harden* (Sec. Delano), 2 P. D. (o. s.), 75.

8. In war of 1812—Continued.**(a) Generally—Continued.**

Thirteen days' service will not entitle to pension under the act of March 9, 1878, neither the record nor the other evidence showing any additional days of travel to and from the rendezvous. *Anna E. Orr* (Asst. Sec. Bussey), 4 P. D., 16.

The law of March 9, 1878, does not provide pension for any soldier or for the widow of any such who did not serve for fourteen days or more in the war of 1812, unless he was in some engagement, and appellant's late husband not having served for such a period, including the time actually in the service, and one day additional for every twenty miles of travel from the place where his company was discharged to the place where it was organized, she is not pensionable. See case of *David J. Bailey* (7 P. D., 173). *Rebecca McDonald* (Asst. Sec. Reynolds), 7 P. D., 506.

(b) Aids-de-camp.

Aids-de-camp, not being commissioned as such, are not pensionable under section 14, act of January 11, 1812, which looks only to "commissioned and noncommissioned officers, musicians, and privates" in fixing the rate of allowance of pension; but pension of the aid-de-camp must be regulated by the pay belonging to his commission as captain (in this case). *Atty. Gen. Wirt*, 1 Op., 413.

(c) Waiter.

Service as a waiter to an officer in the war of 1812 is not such service as entitled a person to bounty land or pension. *Nancy H. Ulmer* (Sec. Schurz), 6 P. D. (o. s.), 292.

9. War with Mexico.**(a) Must have been at the seat of war.**

Application for bounty land under act of March 3, 1855, based upon service rendered during the Mexican war: *Held*, That such service must have been performed at the seat of war or directly connected with it in order to come within the provisions of said act. *William L. Wilson* (Sec. Schurz), 4 P. D. (o. s.), 473.

The service in the war with Mexico that entitles an applicant to bounty land under section 2425, Revised Statutes, is service at the seat of war. *Charles T. Loomis* (Asst. Sec. Bussey), 5 P. D., 35.

See also BOUNTY LAND.

9. War with Mexico—Continued.**(b) What considered service at the seat of war.**

A soldier who, while with his command en route to Mexico, was taken sick and sent to hospital, from which he was discharged more than sixty days after he started to the seat of war, his command having continued thereto, will be considered as coming within the provisions of the act of January 29, 1887, in so far as the requirement of sixty days' service or that he had been en route to Mexico is concerned. *Eudora H. Lyon* (Asst. Sec. Reynolds), 7 P. D., 215.

(c) What is not.

Where, pursuant to the President's proclamation and the call of the governor of Ohio made thereunder asking for volunteers for service in the Mexican war, claimant went to the rendezvous where such volunteers were organized into companies and regiments and was there enrolled for such service, but, in consequence of more having volunteered than were necessary to fill the quota called for, was sent home without formal discharge, and was afterwards mustered out or formally discharged to date from time he was sent home, and was paid for such time only as he was actually with his organization, his service was not pensionable service under the act of January 29, 1887. *Robert W. P. Muse* (Asst. Sec. Hawkins), 2 P. D., 180.

Service at Fort Snelling, Minn., does not entitle to pension under the act of January 29, 1887. Citing *Robert W. P. Muse*, 2 P. D., 180. *Annie Quinn* (Asst. Sec. Hawkins), 2 P. D., 248.

It is not sufficient, under the act of January 29, 1887, that, in response to the call for troops, a claimant went from his home 30 or 100 miles to the place of rendezvous and enlistment; but, after the organization was completed, he must have served sixty days on the coasts or frontier of Mexico or en route thereto; and as the members of Gray's battalion, Arkansas Mexican War Volunteers, organized at Fort Smith, Ark., were never ordered to the seat of war, nor to any other than the place of organization, they are not pensionable under said act. *Benjamin J. W. French* (Asst. Sec. Hawkins), 2 P. D., 356.

See Act of February 5, 1897.

The vessel on which claimant was serving in China was, during the war with Mexico, ordered to the United States, and on its arrival at San Francisco, Cal., claimant was ordered to Washington, D. C. It is held that such service en route from China to San Francisco was not service in Mexico, en route thereto, nor on the coasts or frontier thereof. *William D. Whiting* (Asst. Sec. Bussoy), 3 P. D., 331.

9. War with Mexico—Continued.

(c) What is not—Continued.

A soldier in the Mexican war whose service was confined to a recruiting station in the State of New York is not entitled to a pension under the provisions of the act of January 29, 1887. The law requires sixty days' service "in Mexico, on the coasts or frontier thereof, or en route thereto," or actual engagement in battle, or personal mention in Congressional resolution, for specific service in said war, to give title to pension thereunder. *Joseph Shattuck* (Asst. Sec. Reynolds), 7 P. D., 54.

The act of January 29, 1887 (Mexican war act), requires that the service must have been rendered "in the war with that nation," and not simply during the war. The service, when outside of Mexico, must have had some direct connection with and have formed part of the military or naval operations in that war—not by way of garrison duty at some post far remote from the borders of Mexico, but as actually en route to the seat of war or serving "on the coasts or frontier" in belligerent attitude. Travel from Philadelphia, Pa., under orders to proceed to Fort Gibson, Ind. T., and garrison duty performed there during the war, were not such service as is contemplated by said act. Cases in 1 P. D., 453, and 2 P. D., 220, 248, and 356 cited. *George Akenback* (Asst. Sec. Reynolds), 7 P. D., 169.

Travel from place of enlistment to and garrison duty performed at Fort Gibson, Ind. T., during the war with Mexico were not such service in said war as was contemplated by the act of January 29, 1887, to give title to pension under said act. *Julia B. Hollyncood* (Asst. Sec. Reynolds), 8 P. D., 106.

Claimant's regiment was called into the service during the war with Mexico for the purpose of protecting the United States trains on the Santa Fe route and to punish the Indians who had attacked those trains, and claimant's service in said command was all rendered at Fort Leavenworth, Kans., Independence, Mo., on the Santa Fe road near Fort Burt, Fort Mann, on the Arkansas River, Walnut Creek, and Council Grove, and not in Mexico, on the coasts or frontier thereof, nor en route thereto, and he is not, therefore, pensionable as a survivor of the Mexican war under the act of January 29, 1887. *Anton Brunz* (Asst. Sec. Reynolds), 8 P. D., —.

10. In the war of the rebellion.

a) Generally.

Enlistment is a personal contract between the soldier and the Government to which no other person may be subrogated by private agreement with the soldier. Presumption of enlistment can not arise where admitted facts show that there was

10. In the war of the rebellion—Continued.**(a) Generally—Continued.**

no enlistment. Enlistment of soldier is essential to pensionable status of widow under first paragraph of section 4693, Revised Statutes. Where service was rendered under third paragraph of section 4693, Revised Statutes, soldier's death from wounds or injuries received therein is essential to confer pensionable status upon his widow. *Mary E. Davis* (Asst. Sec. Reynolds), 7 P. D., 56.

The pension provided in section 2 of the act of June 27, 1890, is limited to such persons as regularly enlisted or were mustered into the military or naval service of the United States and served therein for ninety days or more during the late war of the rebellion and were honorably discharged therefrom. Service as a provost-marshal, deputy provost-marshal, or enrolling officer during the late war of the rebellion is not such military service as is contemplated by section 2 of the act of June 27, 1890; such persons having been employed in the civil branch of the service are not included within the terms of said section and are not pensionable thereunder. *Andrew J. Shannon* (Asst. Sec. Reynolds), 7 P. D., 64.

The question as to whether services were rendered in the war of the rebellion or in other military operations is determined by the actual purposes of enlistment and actual services rendered. *Franklin S. Cowen* (Asst. Sec. Reynolds), 7 P. D., 374.

(b) Commencement of, for pensionable purposes.

The beginning of the war of the rebellion is dated in the pension laws for pensionable purposes on March 4, 1861. *Ellen Pearson* (Asst. Sec. Bussey), 5 P. D., 258.

(c) Termination of, for pensionable purposes.

The technical legal termination of the war of the rebellion was August 20, 1866. Under section 2 of the act of June 27, 1890, service must have been rendered both during and in some necessary connection with the war of the rebellion as a part of its belligerent operations. Service rendered after July, 1865, will be presumed to have not been in said war; and the burden of proof will be upon claimants to show by positive and satisfactory evidence that such service was in some actual connection with the war as existing at the time the service was rendered. Service rendered after April 2, 1866, must be shown to have been rendered in some connection with the war as existing in the State of Texas. Service rendered within the State of Tennessee after June 13, 1865, will likewise be presumed not to have been in said war unless shown to have had some necessary connection with the war elsewhere. *John Barleyoung* (Asst. Sec. Reynolds), 7 P. D., 453.

10. In the war of the rebellion—Continued.**(c) Termination of, for pensionable purposes—Continued.**

Enlistments in the loyal States after April 13, 1865, will not be deemed enlistments in or for the war of the rebellion, and any service rendered under such enlistments will be presumed not to have been rendered in the war of the rebellion, and to establish the contrary the claimant will be required to show affirmatively that his said subsequent service was rendered in direct connection with active military duty in aid of suppressing the rebellion. *Edvard Farrell et al.* (Asst. Sec. Reynolds), 7 P. D., 532.

Any enlistment in any other of the States, Territories, or District of Columbia, made after June 1, 1865, of any white or colored troops, will not be deemed an enlistment in or for the war of the rebellion, and any service rendered under an enlistment or reenlistment subsequent to June 1, 1865, is presumptively not a service in the war of the rebellion, and to overcome such presumption active war service in aiding the suppression of the armed force of the Confederate States should be shown subsequent to such enlistment. *Ibid.*

Enlistments in the United States Navy after July 1, 1865, were not enlistments in or for the war of the rebellion, and any service in the United States Navy rendered after that date under any enlistment prior thereto is presumptively not service in the war of the rebellion, and the burden of proof to overcome the presumption is upon the claimant to show, by satisfactory evidence, that such service was active war or naval service in aiding the suppression of the rebellion. *Ibid.*

11. Additional paymasters.

An additional paymaster (in the Army) is regarded as having been in the civil branch of the service and is pensionable during the period of such service notwithstanding the proviso of the act of April 30, 1844; according to the opinion of Attorney-General Toucey, 5 Op. Atty. Gen., 51. *George B. Ely* (Asst. Sec. Otto), 5 L. B. P., 209.

The widow of an additional paymaster is pensionable under section 3, act of June 27, 1890. *Marcia M. Rhodes* (Asst. Sec. Reynolds), 8 P. D., 99.

12. Cadets, service as.

The cadets at West Point who have been or may be wounded while in the line of their duty are entitled to be placed on the list of invalids, as provided in the acts of 16th March, 1802, chapter 9; 29th April, 1812, chapter 72, and 3d March, 1815, chapter 79. *Atty. Gen. Wirt*, 1 Op., 348.

12. Cadets, service as—Continued.

A cadet in the West Point United States Military Academy during the period of the war of the rebellion was not in the military service within the meaning of the act of June 27, 1890. *Irving C. Rosse* (Asst. Sec. Bussey), 6 P. D., 68.

Service as a naval cadet in the United States Naval Academy at Annapolis, Md., is not pensionable service under the act of June 27, 1890. Citing *Irving C. Rosse*, 6 P. D., 68. *Evelyn S. Tallman* (Asst. Sec. Bussey), 6 P. D., 261.

13. Captain's clerk, service as.

This claimant's husband was a captain's clerk on the U. S. S. *Massachusetts*. Pursuant to the order of the commander of said vessel he took ship for San Francisco via Panama, but on arriving at the latter place he was taken sick and was ordered by Commander Goldsborough, U. S. N., to return to the United States at once on recovery and report to the Navy Department. He returned to New York, but on his arrival there was so feeble that he went to his home, and, being too ill to write, caused his father to notify the Navy Department, but no official action by that Department appears to have been taken on such notification, and he died soon after: *Held*, on the report of August 18, 1876, of the Acting Secretary of the Navy, that said order of Commander Goldsborough, unless in violation of law or departmental regulation, would be effectual to continue the person in the naval service for a time at least sufficient to enable him to obey the order, and his widow is pensionable under the act of August 11, 1848. Overruling the decision of Acting Secretary Otto, 6 L. B. P., 318, which was based upon a contrary opinion by the Secretary of the Navy. *Widow of Manco C. Dickenson* (Actg. Sec. Gorham), 3 P. D. (U. S.), 409.

See also *Berkely Ward*, L. B. Za., 194, and *Lachlan L. McIntosh*, COMMENCEMENT 8.

14. Civilian employees and nonenlisted men.**(a) Generally.**

During the Mexican war the First Regiment of Missouri Volunteers (Colonel Doniphan) marched from Santa Fe to Chihuahua, Mexico. On said march the regiment was accompanied by a party of traders numbering, with their employees, about 200 men, who, for the better protection of themselves and their property, were organized into two companies, which were dismissed on arriving at Chihuahua, their place of destination; this service was of a private rather than public character, and the persons rendering it were not in the service of

14. Civilian employees and nonenlisted men—Continued.

(a) Generally—Continued.

the United States and are not entitled to bounty land. *John C. Turner* (Sec. Schurz), 7 P. D. (o. s.), 69.

See also BOUNTY LAND, 22 (gg).

It being shown that this soldier was not an enlisted man, but volunteered for the time being to serve at the battle of Newbern, N. C., in which engagement he was injured, and died in 1879 without having applied for a pension. His widow is not pensionable, as her claim was not filed prior to July 4, 1874, as required by the third subdivision of section 4693, Revised Statutes. *Widow of Erastus G. Dayton* (Sec. Kirkwood), 9 P. D. (o. s.), 23.

Members of a company formed voluntarily by a number of civilians (quartermaster's clerks, sutlers, camp followers, etc.), who accompanied General Scott's army into the valley of Mexico during the Mexican war, to serve only during the then existing military crisis and approaching contest of arms before and at the City of Mexico, and were disbanded without ceremony immediately after the capture of that city, "were not duly enlisted" nor "honorably discharged," within the meaning of the act of January 29, 1887, and are not pensionable under said act, although their services were accepted by a commanding general, and an officer of the Regular Army was detailed to command said company. *Widow of Pierre N. Kennerly* (Asst. Sec. Hawkins), 2 P. D., 265.

Reconsidered and adhered to by the same Assistant Secretary, L. B., Jb., 186.

Service in a temporary organization of teamsters, traders, and camp followers accompanying Colonel Doniphan's command in the campaign known as "Doniphan's Expedition," to meet a military emergency which arose near Chihuahua, Mexico, which organization was disbanded and the members discharged as soon as such emergency passed, is not pensionable service and the members thereof were not "duly enlisted" in said service in the Mexican war. Citing and following Florida Kennerly, 2 P. D., 265; adhered to April 13, 1889, L. B. "Ib," 186. *Richard C. Cabeen* (Asst. Sec. Bussey), 4 P. D., 83.

A person employed as a civilian in special service under orders of a commanding general must, to be pensionable, prosecute his claim to a successful issue prior to July 4, 1874; otherwise, he is debarred from pension. *Hardie Hogan Helper* (Asst. Sec. Bussey), 4 P. D., 249.

Claimant took the place of his brother in the ranks of a regiment in the service of the United States, but was never enlisted or mustered. He is not pensionable under section

14. Civilian employees and nonenlisted men—Continued.**(a) Generally—Continued.**

4693, Revised Statutes, for a wound received while serving with said command, his declaration not having been filed prior to July 4, 1874, as he was not an officer nor enlisted man. *Henry M. Bell* (Asst. Sec. Bussey), 5 P. D., 196.

The widow of a nonenlisted man killed in battle with rebels is not pensionable under the third subdivision of section 4693, Revised Statutes, unless her claim was prosecuted to a successful termination prior to July 4, 1874. *Maria C. Worthington* (Asst. Sec. Bussey), 5 P. D., 203.

A pilot serving on a vessel of the Navy is not an officer nor enlisted man, and neither is he nor his widow entitled to pension under the act of June 27, 1890. *Susannah, widow of Francis Mackey* (Asst. Sec. Reynolds), 8 P. D., —.

The third paragraph of section 4693, Revised Statutes, specially provides pension for nonenlisted men wounded or injured in a battle or other temporary service, upon the condition that the claim for pension be filed and successfully prosecuted prior to July 4, 1874. *Ibid.*

A claimant who is pensioned for disability incurred in the service and line of duty is not entitled to additional pension on account of a wound received after his discharge from the service while arresting a deserter, though acting under written orders from an acting provost-marshal, for the reason that he was not at the time of receiving said wound an officer or enlisted man in the Army, Navy, or Marine Corps, nor a provost-marshal, deputy provost-marshal, or enrolling officer. *Samuel McCann* (Asst. Sec. Reynolds), 8 P. D., 286.

(b) Enrolling officers.

Enrolling officers who served during the war of the rebellion are regarded as having been employed in the civil branch of the service, and are not included within the terms of section 2 of the act of June 27, 1890. *James M. Barnes* (Asst. Sec. Reynolds), 8 P. D., 94.

Pension under section 2 of the act of June 27, 1890, is limited to persons regularly enlisted or mustered into the military or naval service of the United States, who served therein for ninety days or more during the late war of the rebellion, and were honorably discharged therefrom. *Ibid.*

(c) Medical, Subsistence, and Quartermaster's Departments.

An employee of the Subsistence Department who was injured in a skirmish with Indians in Kansas while in charge of a sub-

14. Civilian employees and nonenlisted men—Continued.**(c) Medical, Subsistence, and Quartermaster's Departments—Continued.**

sistence train is not within the purview of the ninth section of the act of July 4, 1864. *John E. Harbert* (Actg. Sec. Cowen), 1 P. D. (o. s.), 12.

Under the Attorney-General's holding of February 24, 1881, adhering to decision of Attorney-General Toucey, (5 Op. 51), it logically follows that persons connected with the Medical, Subsistence, and Quartermaster's Departments should be regarded as within the civil branch of the service; and therefore pension may not be withheld for the period of this pensioner's service as provost-marshal, Nineteenth Congressional district, Pennsylvania. *H. S. Campbell* (Sec. Schurz), 8 P. D. (o. s.), 85.

Nonenlisted men, e. g., quartermaster's employees, are not pensionable under section 2 of the act of June 27, 1890. *Communication* (Asst. Sec. Bussey), 4 P. D., 136.

(d) Mississippi Marine Brigade.

The captains, pilots, engineers, etc., of the Mississippi Marine Brigade were not mustered into the military or naval service, and are not, therefore, pensionable. *John G. Coney* (Sec. Delano), 2 P. D. (o. s.), 35.

(e) Packhorsemen.

The application of widow for pension under act of March 9, 1878, based upon service of husband as a pack horseman, as he must be regarded as civil employee and not included in the provisions of said act, must be rejected. The granting of bounty land in this case does not show prima facie title to pension. *Elizabeth McCoy (widow)* (Actg. Sec. Bell), 7 P. D. (o. s.), 194.

(f) Teamsters.

Teamsters of the Quartermaster's Department serving in the war of 1812 not entitled to pension. *Tryphene* (Sec. Schurz), 5 P. D. (o. s.), 291.

Teamsters employed in Quartermaster's Department in the Mexican war were civilian employees and are not pensionable under the act of January 29, 1887. *Samuel P. Tate* (Asst. Sec. Hawkins), 1 P. D., 449.

Quotes, as precisely similar, and follows Samuel P. Tate, 1 P. D., 449. *John F. Dissman* (Asst. Sec. Hawkins), 2 P. D., 19.

15. Contract and civil surgeons.

A contract surgeon on entering the service was ordered to duty in a post hospital at a distant place, and in obedience
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15. Contract and civil surgeons—Continued.

to the order went aboard a steamer to proceed thither, but before the departure of the boat became too sick to go on and was removed to a hospital, where he died in a few days of typhoid fever, leaving a dependent mother, but no widow or child: *Held*, That under the provisions of sections 4692, 4693, and 4707, Revised Statutes, the dependent mother is entitled to be enrolled as a pensioner, on the ground that the deceased, when taken down with sickness, was "in transitu" under orders. *Actg. Atty. Gen. Phillips*, 17 Op., 457.

A civil surgeon detailed as hospital surgeon by the governor of a State at the request of the Surgeon-General is not pensionable. *Charles Hodge, jr.* (Sec. Delano), 2 P. D. (o. s.), 348.

The mother of an acting assistant or contract surgeon who died before reaching his post of duty is not pensionable, as he did not contract his fatal disease under the conditions named in section 4693, Revised Statutes. *Mother of S. S. Bicknell* (Sec. Delano), 9 P. D. (o. s.), 247.

Contract surgeons having been made pensionable by the acts approved March 3, 1865, and March 3, 1873, are likewise pensionable under section 2 of the act of June 27, 1890. *Richard Mace* (Asst. Sec. Bussey), 5 P. D., 16.

Overruled: 7 P. D., 408.

Service as acting assistant or contract surgeon during the war of the late rebellion is not such military service as is contemplated by section 2 of the act of June 27, 1890, and confers no pensionable rights under said act. The case of *Richard Mace*, 5 P. D., 16, overruled. *Henry Cushman* (Asst. Sec. Reynolds), 7 P. D., 408.

A contract surgeon is not pensionable under the act of June 27, 1890. Case of *Richard Mace*, 5 P. D., 16, is overruled in so far as it indicates a contrary opinion. *Annie E. Few* (Asst. Sec. Reynolds), 8 P. D., 95.

16. Drafted men and substitutes.

The records showing the name of the alleged principal is borne thereon without any mention of the service having been performed by substitution, parol evidence is not admissible to prove the alleged service by substitution. *Abimael K. Rives* (Actg. Sec. Cowen), 2 P. D. (o. s.), 208.

See also EVIDENCE.

Where a son took his father's place in the ranks, serving thereafter under his father's name, reenlisted as a veteran volunteer and was finally mustered out as such volunteer, he is pensionable for injuries received in line of duty in his second

16. Drafted men and substitutes—Continued.

service, notwithstanding that he served under another than his own name and was never enlisted in the first service. *Christian, alias Ernest Ulrich* (Asst. Sec. Bussey), 4 P. D., 411.

Where a claimant who was drafted for one year's service failed to appear and was arrested as a deserter, was tried, convicted, and sentenced to forfeit all pay and allowances then due or to become due to the date of the promulgation of the sentence, and thereafter to be assigned to some regiment in the field to serve one year from the date of joining the same, the legal effect of said sentence was to postpone the commencement of his pensionable military service until his assignment to some regiment in the field, in accordance with said sentence; and where so much of said sentence as directed him to be assigned to some regiment in the field was never carried into effect, his prospective military service never commenced, and any disability incurred by claimant can not be considered as having been incurred in the line of duty. *Obediah P. Hankinson* (Asst. Sec. Reynolds), 7 P. D., 227.

When a drafted man or substitute was examined and accepted by a board of enrollment in the draft district, under the draft act of 1863, he was in the United States service until discharged as any other soldier might be. Appellant's husband, the soldier, was a substitute, accepted by the board of enrollment of the Sixth district of Indiana and mustered into the service of the United States by the provost-marshal of said district September 26, 1864, was sent to the general draft rendezvous at Indianapolis, Ind., again examined by a board of inspectors, rejected, and discharged from the service January 20, 1865, upon a surgeon's certificate to the effect that disability existed at enlistment. It is held upon the opinion of the Judge-Advocate-General of the Army that said soldier was in the service of the United States from the date of his acceptance by the board of enrollment to date of his discharge for disability. *Elizabeth H. Poland* (Asst. Sec. Reynolds), 8 P. D., 266.

17. Hospital and other stewards.

A steward serving on board a ship, borne on its books as one of the crew, and amenable to martial law, is a seaman within the meaning of the pension laws so as to entitle his widow to pension, but such a case is entirely distinguishable from that of hospital steward. *Att'y. Gen. Butler*, 3 Op., 292.

A temporary detail to perform clerical duty can not be regarded as a transfer to the civil branch of the service. A hospital steward is regarded as belonging to the military branch

17. Hospital and other stewards—Continued.

of the Government, and pension should be withheld during the period of such service. *Samuel Hilton* (Sec. Schurz), 6 P. D. (o. s.), 317.

A soldier who, subsequent to his discharge, reenlisted as hospital steward, to perform clerical duty in the War Department, is pensionable on account of disability incurred in his first service during the period of his subsequent service in the War Department. Citing *William Mulhall* (January 19, 1872). *Bartholomew O'Leary* (Sec. Teller), 9 P. D. (o. s.), 242.

18. Pay clerk and paymaster's clerks.

A pay clerk in the Navy is an officer in the naval service. Appellant's name having been placed on the pension roll under the act of June 27, 1890, and never having been formally dropped therefrom, he is entitled to pension for such period as he was not in the military or naval service of the United States. *Joseph E. Edsall* (Asst. Sec. Reynolds), 7 P. D., 595.

A paymaster's clerk appointed under the authority of the act of July 5, 1838, is not an "officer" or "enlisted man" in the Army within the meaning of the act of January 29, 1887. Adhering, on reconsideration, to the decision herein of June 30, 1888. A paymaster's clerk in the Navy, however, is an "officer" of the Navy. *John H. Cassin* (Asst. Sec. Hawkins), 2 P. D., 376.

Adhered to on motion for reconsideration (Asst. Sec. Bussey), 4 P. D., 218.

19. Powell's Battalion.

As the records show the services rendered by the members of "Powell's Battalion" were for the purpose of protecting trains on the Oregon trail from Indians, and had no connection with the Mexican war then in progress, and were rendered subsequent to the close of active military operations in said war, said members are not pensionable under the act of January 29, 1887; although such members may have been granted a bounty-land warrant on account of such services. *George E (H). Brockman* (Asst. Sec. Hawkins), 1 P. D., 453.

Service in Powell's Missouri Battalion does not entitle to pension under the act of January 29, 1887, as the members of that organization never were en route to Mexico or the seat of war, and were not ordered from the rendezvous for that purpose, but for an entirely different purpose. Denying motion, made by the Commissioner of Pensions, for reconsideration of case (1 P. D., 453). 2 P. D., 239.

See act of March 3, 1891, SUPPLEMENT A.

20. Privateersmen.

Privateersmen are not included in the pension law of June 7, 1832; the language of said act, "officers, noncommissioned officers, mariners, and marines who served" in the naval service, etc., being applicable to those only who were in the immediate service of the Government, and formed a part of the public naval force, and not to those who were engaged in private armed ships. *Atty. Gen. Taney*, 2 Op., 531.

21. Professor in Military Academy.

There is no provision of law pensioning a professor of French in the Military Academy at West Point. Although such professor belongs to the regular military establishment of the United States, he is not pensionable (nor is his widow), because he is not a commissioned officer, nor an enlisted man, nor a member of any one of the classes enumerated in section 4693, Revised Statutes. On a subsequent submission to the Attorney-General, he held that such professors are commissioned officers assimilated, by reason of pay and allowances, to the rank of colonel and lieutenant-colonel, and are pensionable accordingly, in case of disability contracted under the conditions set forth in section 4693, Revised Statutes. *Widow of Hyacinthe Robert Agnel* (Sec. Kirkwood), 9 P. D. (o. s.), 144; (Sec. Teller), *ibid.*, 263.

22. Provost marshals.

A provost marshal is regarded as being in the military service of the United States, having held the rank and received the pay and emoluments of captain of cavalry, and as such must be deprived of pension during said period of service as such under section 4724, Revised Statutes. *A. W. Bolenius* (Sec. Schurz), 4 P. D. (o. s.), 330.

A deputy provost marshal is not an officer of the Army, Navy, or Marine Corps, and pension can not be withheld under section 4724, Revised Statutes, while holding such office. *Daniel D. Muthersbough* (Sec. Schurz), 6 P. D. (o. s.), 252.

A deputy provost marshal is not pensionable for disease contracted. Such officer is pensionable only under the fifth subdivision of section 4693, Revised Statutes, for disability due to any wound or injury received in the discharge of his duty. *Thomas Phillips* (Asst. Sec. Bussey), 5 P. D., 362.

Service as a provost-marshal, deputy provost-marshal, or enrolling officer during the late war of the rebellion, is not such military service as is contemplated by section 2 of the act of June 27, 1890; such persons having been employed in

22. Provost marshals—Continued.

the civil branch of the service are not included within the terms of said section and are not pensionable thereunder. *Andrew J. Shannon* (Asst. Sec. Reynolds), 7 P. D., 64.

23. Purser's clerk.

A purser's clerk is an officer of the Navy within the meaning of the act of January 29, 1887. Overrules Berkely Ward (captain's clerk), L. B., "Za," 194. *Richard H. Sinton* (Asst. Sec. Hawkins), 2 P. D., 320.

24. Rejected recruit.

Where a soldier was duly enlisted, was held in company as an unexamined recruit, and was finally discharged as a rejected recruit on a surgeon's certificate of disability, it is held that although he was technically in the service from the date of his enlistment and would be pensionable for any disability incurred in line of duty subsequent thereto, yet this claimant is not pensionable on account of disease of eyes for which he was discharged, as the evidence fails to show said disease was incurred subsequent to his enlistment, but shows, on the contrary, that it existed prior thereto. *Alvin Oline* (Asst. Sec. Bussey), 6 P. D., 212.

25. Revenue marines.

An employee of the Treasury Department on board the U. S. revenue cutter *Mahoney* is not in the naval service, and is not pensionable for injuries received while so employed. *Alexander W. Powell* (Actg. Sec. Gorham), 3 P. D. (o. s.), 420.

Officers and seamen of the revenue cutters are pensionable only in case they contract disability while their vessel was cooperating with the Navy under orders of the President, and under no other circumstances. As the revenue cutter *Mahoning* was not thus cooperating in August, 1864, the date of the alleged incurrence of disability herein, this claimant is not pensionable. *Alexander W. Rowell* (Sec. Schurz), 6 P. D. (o. s.), 40.

[NOTE.—This case is evidently the same as that in 3 P. D. (o. s.), 420, though the names of sailor and vessel differ.]

To entitle members of the Revenue Marine to pension under section 4741, Revised Statutes, they must have been in actual and not constructive cooperation with the Navy, under the President's order of June 14, 1863. Citing opinion of the Attorney-General of March 5, 1890. *Louis Schaffer* (Asst. Sec. Bussey), 6 P. D., 137.

25. Revenue marines—Continued.

Vessels of the Revenue Marine were, while cooperating with the Navy by order of the President of June 14, 1863, war vessels, within the meaning of section 4693, Revised Statutes. *Ibid.*

The service rendered by the Revenue Marine, by order of the President of June 14, 1863, in cooperating with the Navy must, in order to entitle to pension under either section 4741, Revised Statutes, or section 4693, Revised Statutes, have been for the purpose named in said order, viz, of arresting rebel depredations on American commerce in transportation, and of capturing rebels engaged therein. *Ibid.*

Other than record evidence is admissible to prove the character of the service rendered by the Revenue Marine while cooperating with the Navy. Citing John G. Coney (3 P. D., 200). *Ibid.*

See also EVIDENCE.

Members of the Revenue-Marine Service are not entitled to pension under the act of June 27, 1890, by virtue of section 4741, Revised Statutes, but only by virtue of the second paragraph of section 4693, Revised Statutes, the vessels on which they served being construed to be "war vessels" within the meaning of said section 4693, Revised Statutes, while cooperating with the Navy under order of the President of June 14, 1863. *Ibid.*

Section 4741, Revised Statutes, confers no pensionable rights upon the widows, or the children or dependent relatives, of those who served in the Revenue Marine. Citing Attorney-General Cushing, 7 Op., 619. *Ibid.*

The widows, minors, or dependent relatives of those serving in the Revenue Marine are pensionable under either sections 4702 and 4707, Revised Statutes, or under the act of June 27, 1890. *Ibid.*

[NOTE.—So much of this decision as relates to pension under act of June 27, 1890, was overruled in the case of David Oliver, following.]

Those only are pensionable under section 2 of the act of June 27, 1890, or their widows and minor children under section 3 thereof, who were regularly enlisted men or officers in the military or naval establishments of the United States. Those who served in the Revenue Marine on vessels which cooperated, by direction of the President, with the Navy, as provided in section 2757, Revised Statutes, were not in the Navy or naval establishment of the United States and are not pensionable under said act, nor their widows or minor children. Case of Louis Schaffer, 6 P. D., 137, overruled in part. *David Oliver* (Asst. Sec. Reynolds), 7 P. D., 597.

26. War vessels.

Captains, pilots, and engineers not regularly mustered into the military or naval service of the United States, and serving on a vessel used merely as a transport, are not entitled to pension under the law. *John G. Coney* (Sec. Delano), 2 P. D. (o. s.), 35.

Overruled: 3 P. D., 200.

A fireman, hired and paid by the owners of a vessel chartered by the Government for purposes of transportation, but not manned as a war vessel, is a nonenlisted man, and, therefore, nonpensionable under section 4693, Revised Statutes. *James O'Neill* (Asst. Sec. Bussey), 5 P. D., 157.

Claimant's husband not having been an officer or enlisted man in the Army or Navy of the United States during the war of the rebellion, she is not pensionable. The decision of the Department in the invalid claim of claimant's husband (3 P. D., 200) cited and relied upon in the appeal held not to be in point. *Angeline Coney* (Asst. Sec. Reynolds), 7 P. D., 390.

A pilot who served upon a war vessel of the United States during the late civil war is not required to show enlistment or muster into the United States military or naval service to entitle him to pension for disability due to wounds or injury received in the line of duty as a civilian employee as such pilot. The case of *John G. Coney*, engineer (3 P. D., 200), cited and approved. *Charles A. Kilburn* (Asst. Sec. Reynolds), 8 P. D., 233.

27. Under act of March 25, 1862.

Claimant's husband was appointed a second lieutenant of engineers in July, 1861, by General Fremont, commanding the Department of the West, and was continued in the service as of the rank of first lieutenant by General Halleck, and served as topographical engineer on the staff of Generals Fremont and Halleck, and was paid as such until the acceptance of his resignation in August, 1862. It is *held* that, under the act of March 25, 1862, he was regularly in the service of the United States as an officer of the Army, as contemplated by sections 4692 and 4693, Revised Statutes. *Mary C. Abry* (Asst. Sec. Reynolds), 8 P. D., —.

See also COMMENCEMENT; COMMISSIONS; BOUNTY LAND; EVIDENCE; HOSPITAL MATRONS; IDENTITY; INDIANS; MEXICAN WAR; MILITIA; NURSES; PAY AND PENSION; WAR VESSELS.

SERVICE PENSIONS.

See MEXICAN WAR; RETIRED OFFICERS.

SISTERS.

See BOUNTY LAND; DEPENDENT RELATIVES.

SIX NATIONS.

See SERVICE.

SOLDIERS' HOME.**Payment to, on account of inmates.**

Institutions for the care of soldiers are entitled to the pensions of those inmates only who are pensioned for wounds or disabilities incurred in service, and not to the pension of one who is pensioned merely for service in the war of 1812. *William Mortimer* (Actg. Sec. Cowen), 2 P. D. (o. s.), 181.

The pension certificates of pensioners who are inmates of National Military Homes should remain in the possession of the commandant until such pensioners cease to be permanent inmates of the Home in the manner prescribed by the regulations governing it, and such pension should continue to be paid for the use and benefit of such inmate's wife and child, although he may have deserted from such institution. *George McFarland* (Sec. Chandler), 3 P. D. (o. s.), 186.

See also ARREARS; PAYMENT.

SPECIAL ACT.**1. When rate, commencement, and duration are fixed by the act.**

(a) *When rank is indicated by the act.*

2. Proof required under—identity.**3. As affected by act of June 6, 1874.****4. As affected by acts of January 25 and March 3, 1879.****5. Remarriage of widow prior to special act pensioning her.****6. Special act to soldier does not include his widow.**

(a) *Special act to widow does not include minors on her death.*

7. Defects in.**1. When rate, commencement, and duration are fixed by the act.**

Where a special act fixes the rate, date of commencement, and duration of pension such conditions are not subject to be varied by the general law, but if any of these conditions are not fixed in the special act the provisions of the general law are applicable. *Hiram Hedrick* (Sec. Delano), 1 P. D. (o. s.), 81.

When the rate, commencement, and duration of a pension allowed by special act are fixed by such act, they shall not be varied by the provisions and limitations of the general pension law. *Caroline M. McDougal* (Asst. Sec. Bussey), 3 P. D., 269.

1. When rate, commencement, and duration are fixed by the act—Continued.

(a) When rank is indicated by the act.

The Commissioner of Pensions, when granting pension under a special act of Congress, must be governed by the terms of said act indicating the rank at which claimant is to be pensioned and by the medical examinations by which the degree of claimant's disability is determined. *James H. Young* (Asst. Sec. Hawkins), 1 P. D., 445.

2. Proof required under—identity.

Where a special act granted pension to the claimant, naming her, as the "mother" of the deceased soldier, when in fact she had only adopted him as her son, which fact is shown by the report of the House committee which had said act in charge, pension should be allowed her on proof of her identity. *Mother of Moses Goodwin* (Sec. Delano), 2 P. D. (o. s.), 218.

Where Congress grants pension by special act without any qualifications, the only proof required is proof of identity, and it is immaterial whether the soldier on whose account such pension was granted (in a mother's case) served in the rebel army, or how or when he was killed, or whether he ever contributed to his mother's support. *Mother of William Hensley* (Sec. Chandler), 3 P. D. (o. s.), 237.

Where a special act grants pension without qualifications, proof only of identity is required to show title thereunder, as in the case of *Ann Hensley*, 3 P. D. (o. s.), 237. *Widow of E. W. Bartlett* (Sec. Chandler), 3 P. D. (o. s.), 240.

Identity of beneficiaries under special act is sufficiently established in their claims under the general law, and no new declaration is required. *Harvey Bush* (Sec. Schurz), 7 P. D. (o. s.), 290.

3. As affected by act of June 6, 1874.

The act of June 6, 1874, "to equalize pensions in certain cases," refers exclusively to those who were, at the date of its passage, drawing pension under a special act at a less rate than that allowed under the general laws for the same disabilities, and has no application to the case of one pensioned by special act subsequent to the passage of said act of June 6, 1874. *Hardie Hogan Helper* (Asst. Sec. Bussey), 4 P. D., 249.

4. As affected by acts of January 25 and March 3, 1879.

Pensions allowed under special act are not affected by acts of January 25 and March 3, 1879. *Edwin Woodson* (Actg. Sec. Bell), 6 P. D. (o. s.), 120.

4. As affected by acts of January 25 and March 3, 1879—
Continued.

There is nothing in the acts of January 25 and March 3, 1879, which can be construed as repealing or in any manner modifying section 4720, Revised Statutes, fixing the commencement of pensions in special-act cases. *Richard Middleton* (Actg. Sec. Bell), 8 P. D. (o. s.), 435.

See also **ARREARS; LIMITATION.**

5. Remarriage of widow prior to special act pensioning her.

Where a widow remarried prior to the approval of the special act granting her pension, payment of pension under said act should be withheld a reasonable time for Congressional action and the facts reported to Congress. *Widow of E. W. Bartlett* (Sec. Chandler), 3 P. D. (o. s.), 240.

6. Special act to soldier does not include his widow.

Widow of soldier is not entitled to succeed to the rights of the invalid pensioned under a special act. *Amelia A. Wilson* (Sec. Schurz), 6 P. D. (o. s.), 44.

(a) Special act to widow does not include minors on her death.

Pensions under special act to widows do not extend to minors in case of the widow's death or remarriage, although said act allows the widow additional pension during the minor's minority, unless provision for such extension is made in the act. *Minor of George W. Foster* (Sec. Chandler), 3 P. D. (o. s.), 110.

A private act of Congress granting a widow's pension, if accepted by the beneficiary, precludes a minor from pension under the general law. *Rufus H. Autry* (Asst. Sec. Reynolds), 7 P. D., 130.

The widow was pensioned under a special act and allowed \$2 per month additional for each of two minor children. Widow died July 1, 1889, and claimants applied for pension as minors under said act: *Held*, That the private act conferred a pensionable status on the widow, but not on the minors, and the rejection of the claim was proper and is affirmed. *Minors of William Hackey* (Asst. Sec. Reynolds), 7 P. D., 212.

The fact that the alleged widow of the soldier was pensioned by special act of Congress and the certificate included pension for herself and her minor children does not confer title upon said children to a continuance of such pension to them after her death, the special act having reference only to title in said alleged widow. *Minors of Hartwell Trickey* (Asst. Sec. Reynolds), 8 P. D., 84.

7. Defects in.

If there appear an error in the special act, as claimant may allege, said claimant must look to Congress for his remedy, and not to either the Secretary of the Interior or the Commissioner of Pensions, neither of whom possesses any discretionary authority in the premises. *James H. Young* (Asst. Sec. Hawkins), 1 P. D., 445.

If a special act of Congress is defective in any respect, the beneficiary's only remedy is to apply to Congress for relief. Citing *James H. Young*, 1 P. D., 445. *Newton O. Ridenour* (Asst. Sec. Hawkins), 2 P. D., 348.

See also ACCRUED PENSION; ARREARS; COMMENCEMENT; CONSTRUCTION OF LAWS; DESERTION; DOUBLE PENSION; ELECTION; INCREASE; MINORS; RESTORATION.

SPECIAL AGENTS.

See ATTORNEYS.

SPECIFIC DISABILITIES.

See AMPUTATION; COMMENCEMENT; DISABILITY; INCREASE; RATING.

SPIES.

See BOUNTY LAND (Service).

STATE AGENTS.

See ATTORNEYS.

STATE CORPORATIONS.

See ACCRUED PENSION (Reimbursement); GUARDIANS.

STATE TROOPS.

See BOUNTY LAND (Service); MILITIA.

STATUS (PENSIONABLE).

See COMMENCEMENT; COMMISSION; DESERTION; DISCHARGE; TITLE.

STEPCHILDREN.

See ABANDONMENT; MINORS; WIDOWS.

STEWARD.

See SERVICE.

SUBSTITUTE.

See ATTORNEYS; BOUNTY LAND; EVIDENCE (Parol); SERVICE.

SUCCESSION OF TITLE.

See CONSTRUCTION OF LAWS; DEPENDENT RELATIVES; TITLE; WIDOWS.

SUICIDE.

See DEATH CAUSE.

SUPPORT, MEANS OF.

See DEPENDENT RELATIVES; WIDOWS.

SURGEONS.

See BOUNTY LAND (Service); CERTIFICATES; EXAMINATIONS; SERVICE.

SURGEON'S CERTIFICATE.

See EVIDENCE (Certificate of disability); ORIGIN (Evidence of).

SURRENDER OF CERTIFICATE.

See COMMENCEMENT.

SUSPENSION.

1. Under section 4739, Revised Statutes.
2. Under act of December 21, 1893.
3. Evidence on which based should be sworn to.
4. Effect of, as to payment.

1. Under section 4739, Revised Statutes.

Pursuant to section 4739, Revised Statutes, whenever it is discovered by the Pension Office that a pension has been granted illegally or through false or fraudulent representations, the papers should be submitted to this Department for appropriate action. *Instructions* (Sec. Chandler), 3 P. D. (o. s.), 130.

2. Under act of December 21, 1893.

The act of December 21, 1893, has no application to a case where suspension and resumption of payment had been accomplished prior to its passage. Increase in this case having been procured by fraud, the reduction was proper. *David A. Wetherbee* (Asst. Sec. Reynolds), 7 P. D., 562.

2. Under act of December 21, 1893—Continued.

The act of December 21, 1893, relieves the Commissioner of Pensions of the power, theretofore exercised, of suspending the payment of a pension pending the proceeding to annul or reduce it, leaving the pension to accrue during the period, and to the pensioner the right to demand and receive payment at the times fixed for payments under the law. But when the decision of the Commissioner of Pensions is rendered, the effect thereof, under the act of December 21, 1893, is to authorize a withdrawal of payment, not only as to such illegal part, which, but for the decision, might thereafter have accrued, but as to all unpaid pension adjudged illegal under that decision. *Mary J. Rice, widow* (Asst. Sec. Reynolds), 7 P. D., 569.

3. Evidence on which based should be sworn to.

Payment of pension should not be suspended upon unsworn statements. *Lemon N. Simons* (Actg. Sec. Cowen), 2 P. D. (o. s.), 1.

4. Effect of, as to payment.

Where payment of pension has been suspended on a charge of disloyalty, which is subsequently proven, and pensioner is dropped, he is not entitled to payment from the date of suspension to the date of dropping, and there is no accrued pension due. *Penita Hendley* (Sec. Delano), 1 P. D. (o. s.), 327.

See also ABANDONMENT; ATTORNEYS; DISLOYALTY; EVIDENCE; VESTED RIGHTS.

TEAMSTERS.

See BOUNTY LAND (Service); SERVICE.

TERMINATION.

See DISCHARGE; MEXICAN WAR; REVOLUTIONARY WAR; SERVICE (War of the Rebellion); WAR OF 1812.

TEXAN FRONTIER DISTURBANCES.

See BOUNTY LAND (Service).

TITLE.

1. Generally.

2. Under section 2, act of June 27, 1890.

1. Generally.

The meral turpitude of a claimant is not an element to be considered in determining his right to pension. The fact that he is disabled by reason of disease or of injury contracted in

1. Generally—Continued.

the line of duty is the criterion of his pensionable status. *William W. Meyer* (Asst. Sec. Bussey), 3 P. D., 246.

A pensioner can not draw any invalid pension for a period during which he held the status of a soldier. *Halvor Nelson* (Asst. Sec. Bussey), 4 P. D., 261.

2. Under section 2, act of June 27, 1890.

Under said act a soldier must have (1) served at least ninety days, (2) received a final honorable discharge from the service, (3) a permanent physical or mental inability to earn a support, not due to his own vicious habits. *Communication* (Asst. Sec. Bussey), 4 P. D., 225.

See also ADMINISTRATORS; DECLARATIONS; INDIAN WARS; MARINE CORPS; REMARRIAGE; WIDOWS.

TOLEDO WAR

See BOUNTY LAND (Service).

TOTAL DISABILITY.

See DISABILITIES.

TRANSPORTS.

See WAR VESSELS.

TRAVEL PAY.

See SERVICE.

TREASURY DEPARTMENT.

See JURISDICTION.

TRUST COMPANY.

See GUARDIANS.

VACANCY.

See COMMISSION; RANK; RATING.

VESTED RIGHT.

The pension to a widow is a vested right, ceasing upon her marriage as to further claim upon the Government, but remaining valid for arrears. The rights of the surviving husband to those arrears depends upon the laws of the State where the parties resided at the time of the wife's demise. *Atty. Gen. Butler*, 3 Op., 68.

There can be no vested right to a pension under any unadjudicated claim, unless it be a duty of the Government, as expressed in some existing statute, to grant it; and no act of any officer of the Government can create or confer a right to pension unless such officer be authorized by law so to do. The evidence in this case failing to show satisfactorily that the husband's death cause was incident to his service, his widow has no right to pension, and payment was properly suspended. *Catharine Harris (widow)* (Sec. Delano), 2 P. D. (o. s.), 256.

No pensioner has a vested legal right to his pension. *Jackson Martin* (Asst. Sec. Reynolds), 7 P. D., 265.

See also ABUSE; FRAUD AND MISTAKE; SUSPENSION.

VETERAN FURLOUGH

See FURLOUGH; LINE OF DUTY.

VICIOUS HABITS.

Under act of June 27, 1890.

The rejection of a claim under section 2 of the act of June 27, 1890, on the ground that "the alleged disabilities were contracted while soldier was in confinement under sentence for desertion" is error, as said act does not make line of duty a condition of pension, and a disability so incurred can not be considered as due to vicious habits. *George Martin* (Asst. Sec. Bussey), 5 P. D., 332.

The evidence tending strongly to show soldier purposely inflicted the wound on his hand, he having retired to a lonely place, unaccompanied, a short time previous to the second battle of Bull Run, and his statements being contradictory, it is held said wound was due to vicious habits, and is not pensionable under the act of June 27, 1890. *Halsey Cole* (Asst. Sec. Bussey), 6 P. D., 104.

In claims filed under the act of June 27, 1890, it must appear that the disabilities which occasion the incapacity for earning a support are not due to any vicious habits which a person reasonably careful would avoid and recognize as liable to seriously impair his physical condition. *Wandison Todd* (Asst. Sec. Reynolds), 7 P. D., 402.

The legal effect upon title of a claimant for pension who resorts to vicious or harmful habits is akin to the effect contributory negligence would have were he suing for damages. It must appear that the disabilities which occasion the incapacity for earning a support are not due to any habit which a person ordinarily careful of health would avoid. *Ibid.*

See also DEATH CAUSE; DISABILITIES; EVIDENCE; ORIGIN; PRACTICE.

VOLUNTEERS.

See INDIAN WARS; MILITIA.

WAIVER.

See ELECTION.

WAR DEPARTMENT.

See BOUNTY LAND (Service); EVIDENCE (Record); JURISDICTION; RANK; RECORDS; SECRETARY OF WAR.

WAR OF 1812.

The war with Great Britain mentioned in section 17 of the act of February 14, 1871, and March 9, 1878, refers to the period between June 18, 1812, the date of the declaration of war, and the 17th of February, 1815, the date of the treaty of peace, and service rendered subsequent to the last-mentioned date was not rendered in said war. *Mary Sams* (Sec. Schurz), 5 P. D. (o. s.), 133.

See also ACCRUED PENSION; BOUNTY LAND (Mothers); DESERTION; INDIANS.

WAR OF THE REBELLION.**Commencement of—Ruling 244.**

The war of the rebellion commenced, for pensionable purposes, both under the general law and under the act of June 27, 1890, on March 4, 1861. Ruling 244 is modified accordingly. *Ellen Pearson* (Asst. Sec. Bussey), 5 P. D., 258.

Termination of.

See SERVICE (War of the Rebellion).

WAR VESSELS.

1. "Champion."
2. Coast Survey steamer.
3. "Diana" was not a war vessel.
(a) *Contra*.
4. "Dime."
5. "Martha Nichols."
6. Transports, generally.
7. "Minnehaha."

1. "Champion."

The Secretary of the Navy having held that the steamer *Champion* was used as a gunboat from March, 1863, until the close of the war, those serving thereon during that period are pensionable under section 10 of the act of July 14, 1862.

Robert S. Goodall (Sec. Delano), 8 L. B. P., 443.

2. Coast Survey steamer.

A disability incurred while serving on a Coast Survey steamer after its transference to the Navy and while it was employed by the Navy Department in naval operations during the war of the rebellion is pensionable under the second subdivision of section 4693, Revised Statutes, such vessel being to all intents and purposes a war vessel within the meaning of said section. Citing *John G. Coney*, 3 P. D., 200. *Edwin L. Brady* (Asst. Sec. Bussey), 6 P. D., 156.

3. "Diana" was not a war vessel.

The *Diana*, of the Mississippi Marine Brigade, was a transport, and not a war vessel. *John G. Coney* (Sec. Delano), 2 P. D. (o. s.), 35.

(a) Contra.

The *Diana*, of "Ellet's ram fleet," was a war vessel. *Ibid.* (Asst. Sec. Bussey), 3 P. D., 200.

4. "Dime."

By gunboat or war vessel is meant an armed vessel designed for battle. The *Dime* was a steam tug or dispatch boat in the employ of the Quartermaster's Department, and was not a war vessel. *Mother of Samuel G. Burt* (Sec. Teller), 13 P. D. (o. s.), 576.

A person, or the widow of a person, employed on the steam tug *Dime* is not pensionable, as said vessel was not designed and equipped, in whole or in part, for fighting, and is not, therefore, a "war vessel" in the contemplation of section 4693, Revised Statutes. Citing and affirming *Samuel G. Burt* (a steersman on the *Dime*), 13 P. D. (o. s.), 576, and distinguishing this case from *John G. Coney*, 3 P. D., 200, employed on the steamer *Diana*, in that the latter vessel was armed with a 20-pounder Parrott gun and two 12-pounder brass guns and was used in every way as a vessel of war, while the *Dime* was a mere dispatch boat employed by the Quartermaster's Department. *Widow of William M. Dunn* (Asst. Sec. Bussey), 4 P. D., 201.

5. "Martha Nichols."

It has been uniformly held by this Department that the expression "gunboats and war vessels" was intended to include such vessels only as were armed for battle, and not such as were employed by the Army for transporting supplies. The schooner *Martha Nichols*, engaged in carrying supplies off Cape Hatteras, was not a war vessel. *Benjamin A. Bentley* (Actg. Sec. Joslyn), 13 P. D. (o. s.), 501.

6. Transports.

The expression "gunboats and war vessels" was intended to include such vessels only as were armed for battle, and does not include transports employed by the Quartermaster's Department. *Ibid.*

7. "Minnehaha."

The transport *Minnehaha* was under charter by the Quartermaster's Department, and the crew was secured and paid by the owners of the vessel. Claimant's service thereon was not as an enlisted man in the military or naval service of the United States, and he did not render service on a gunboat or war vessel of the United States, and has no title to pension under existing law. *William Evans* (Asst. Sec. Reynolds), 8 P. D., —.

See also GUNBOATS; SERVICE.

WARRANTS.

See BOUNTY LAND.

WASHINGTON, D. C.

See MILITARY POST.

WIDOWS.**1. Generally—when entitled.**

- (a) *Title as affected by divorce from soldier.*
- (b) *As affected by remarriage.*
- (c) *On account of stepchildren.*

2. Title on account of ante-rebellion service.

- (a) *Soldier's widow.*
- (b) *Sailor's widow.*

3. Under act of July 14, 1862.**4. Widow of naval officer.****5. Widow of nonenlisted man—limitation.****6. Under act of June 27, 1890.**

- (a) *Dependency of.*
- (b) *Second claim on account of stepchildren.*

1. Generally—when entitled.

The law gives the widow a pension only in case her husband died "by reason of any wound, injury, or disease which * * * would have entitled him to an invalid pension had he been disabled." *Widow of Franklin Gaskell* (Asst. Sec. Bussey), 3 P. D., 87.

See also RATING.

1. Generally—Continued.

(a) Title as affected by divorce from soldier.

Where the record shows that the deceased soldier had procured, in his own lifetime, a regular, legal divorce from the claimant, such claimant has no legal status that the Department can recognize. *Widow of James E. Stacey* (Asst. Sec. Hawkins), 1 P. D., 435.

(b) As affected by remarriage.

See REMARRIAGE.

(c) On account of stepchildren.

Where a widow claims pension for herself and her own children, and also declares for a child of soldier by a former wife, the claim is an entirety, and the rights of all the parties are subject to a single adjudication. In such a case the attorney is entitled to but one fee. *Sarah Clark* (Asst. Sec. Reynolds), 7 P. D., 47.

See SUBTITLE: UNDER ACT OF JUNE 27, 1890, and GENERAL TITLE: ABANDONMENT.

2. Title on account of ante-rebellion service.

The law makes a distinction between widows of sailors and widows of soldiers, the latter being pensionable if the soldier died of disease contracted in some war prior to March 4, 1861, while the former are pensionable only when the sailor died in the service. *Mary Kelley* (Asst. Sec. Reynolds), 8 P. D., —.

(a) Soldier's widow.

In claims of widows, death of the soldier in the service must be shown. *Widow of Andrew Eichberger* (Sec. Delano), 2 P. D. (o. s.), 264.

Where disability of soldier was contracted prior to March 4, 1861, in time of peace, widow's claim was properly rejected upon the ground that under existing laws there was no provision for granting such pension. *Widow of William Silvey* (Sec. Schurz), 4 P. D. (o. s.), 174.

The widow of a soldier who has died or hereafter dies of disease contracted in the military service prior to March 4, 1861, is not entitled to pension unless the death cause originated in some war and produced disability prior to that date. *Widow of Michael Heron* (Sec. Kirkwood), 8 P. D. (o. s.), 294.

(b) Sailor's widow.

Under the laws existing prior to July 14, 1862, the widow of a sailor is entitled to pension only in case he died while in service; but under the act of that date she is entitled also if

2. Title on account of ante-rebellion service—Continued.

(b) Sailor's widow—Continued.

he died subsequent to service, but from a cause originating in line of duty in service. *Widow of John Horner* (Sec. Usher), 5 L. B. P., 141.

Although the act of July 21, 1848, relating to army pensions for service in the Mexican war, and the act of August 11, 1848, relating to navy pensions, require, in widows' claims, that the husband must have been in the service at the time of his death, such requirement is waived by the act of September 28, 1850, and by subsequent acts, and it is believed the present law should be so construed as to allow a naval officer's widow pension, even though he was not in service at the time of his death, the same as the widow of an army officer. *Widow of Manco C. Dickenson* (Actg. Sec. Gorham), 3 P. D. (o. s.), 409.

Under the act approved August 11, 1848, death in the service is a condition absolutely required to confer title to pension upon the widow of an officer or seaman of the Navy, where the claim for pension is founded either upon injury or disease incurred prior to March 4, 1861. *Martha Garner (widow)* (Asst. Sec. Bussey), 5 P. D., 238.

3. Under act of July 14, 1862.

To entitle the persons named in the second, third, fourth, and eleventh sections of the act of July 14, 1862, to the benefit of its provisions, it is essential that the officer, or other person named in the first and tenth sections of the act, should have died in the military or naval service of the United States. *Actg. Atty. Gen. Coffee*, 10 Op., 492.

The widow of a former assistant engineer in the Navy, who died after his resignation by reason of disease contracted in the service and line of duty, is not entitled to a pension under the act of July 14, 1862, chapter 166. *Ibid.*

See *Widow of John Horner*, SUBTITLE 2 (b).

4. Widow of naval officer.

The widow of a naval officer, to be pensionable, must show his death cause originated in the line of duty in the service, and if such origin was subsequent to July 27, 1868, she must show all the requirements mentioned under the act of that date, now section 4694, Revised Statutes. *Widow of James M. Watson* (Sec. Teller), 9 P. D. (o. s.), 219.

5. Widow of nonenlisted man—limitation.

If a nonenlisted man was pensionably disabled, but was not entitled to pension by reason of expiration of the limitation

5. Widow of nonenlisted man—limitation—Continued.

prescribed in section 4693, Revised Statutes, the same limitation should apply to the claim of his widow. *Widow of Wiley Gosnell* (Sec. Delano), 2 P. D. (o. s.), 325.

See also LIMITATIONS.

6. Under act of June 27, 1890.

Under said act a widow must prove (1) her husband served at least ninety days, (2) received a final honorable discharge from the service, (3) his death, (4) that she is without other means of support than her own daily labor, (5) her marriage to him prior to June 27, 1890. *Communication* (Asst. Sec. Bussey), 4 P. D., 225.

Section 3 of the act approved June 27, 1890, confers its benefits upon only those widows whose husbands served ninety days or more during the war of the rebellion, who were thereafter honorably discharged, and who have since died or shall hereafter die. *Catharine McCarty* (Asst. Sec. Bussey), 5 P. D., 28.

(a) Dependency of.

In adjudicating the question of a widow's dependence under the act of June 27, 1890, her age, physical and mental infirmity, locality as affecting living expenses, and social condition should all be taken into account, and when the income, aside from the proceeds of her daily labor, is such as to render the securing of comfortable support a task within the reach of reasonable effort on her part, she is not dependent. *Widow of Junius H. Lewis* (Asst. Sec. Bussey), 6 P. D., 294.

The phrase "means of support," in third section of act of June 27, 1890, is *held* to include all resources, such as lands, goods, salaries, wages, or other sources of income from which the wants of life may be supplied. *Eveline Holtzworth, widow* (Asst. Sec. Reynolds), 7 P. D., 48.

When a widow's income from other sources, added to the proceeds of reasonable effort on her part, affords her a comfortable support she is not entitled to pension under the third section of the act of June 27, 1890 (*Jennie D. Lewis*, 6 P. D., 294). In general, and under ordinary circumstances, where a widow's income from sources independent of her daily labor is considerably in excess of such pension she does not occupy a pensionable status under said section. *Katherine Klein, widow* (Asst. Sec. Reynolds), 7 P. D., 278.

In general, where a widow is shown to have, from sources independent of her labor, an income considerably in excess of

6. Under act of June 27, 1890—Continued.**(a) Dependency of—Continued.**

the amount which the act of June 27, 1890, provides for widows who have no income or means of support outside of their earnings, such widow does not come within the class for whose benefit said act was intended. *Susan Landgraff, widow* (Asst. Sec. Reynolds), 7 P. D., 380.

Section 3 of the act of June 27, 1890, pensions a condition. The right of a widow to a pension under said act must be determined by her condition at the time she seeks to establish her right; it is in no way dependent upon or connected with her previous condition. *Frances Kendall* (Asst. Sec. Reynolds), 8 P. D., 197.

Soldier's life was insured for \$2,500, which amount the widow received about two months after filing her application for pension under the act of June 27, 1890, and speedily squandered, since when she has been in destitute circumstances: *Held*, That she is entitled to receive pension from the date of her application, deducting the period during which she possessed means of support independent of her labor. *Margaret O'Neill* (Asst. Sec. Reynolds), 8 P. D., 333.

A widow possessed of a principal sum of \$3,200, from which she derives an income of \$23 monthly, is not within the terms of the third section of the act of June 27, 1890. Cases of *Lewis* (6 P. D., 294), and *Klein* (7 P. D., 278), cited and followed. *Abigail Zuern* (Asst. Sec. Reynolds), 8 P. D., —.

A widow of soldier who is in receipt of a gross income of \$700 from her husband's estate, which is assessed at \$3,535, is not "without other means of support than her daily labor" within the meaning of section 3 of the act of June 27, 1890, notwithstanding the fact that her net income is but \$200 per annum. The fact that soldier left five minor children under 16 years of age does not entitle his widow to a pension under section 3 of the act of June 27, 1890, if she is not "without other means of support than her daily labor." *Mary E. Stuart* (Asst. Sec. Reynolds), 8 P. D., —.

A widow who owns 388 acres of land, the assessed valuation of which is \$2,475, and which is incumbered by a mortgage for \$200, and whose other indebtedness amounts to \$50, is not "without other means of support than her daily labor" within the meaning of section 3 of the act of June 27, 1890. *Ann F. Pinckley* (Asst. Sec. Reynolds), 8 P. D., —.

A widow in possession of real and personal unincumbered property assessed at \$3,620 is not without other means of sup-

6. Under act of June 27, 1890—Continued.**(a) Dependency of—Continued.**

port than her daily labor within the meaning of section 3 of the act of June 27, 1890. *Angeline M. Bishop* (Asst. Sec. Reynolds), 8 P. D., —.

(b) Second claim on account of stepchildren.

When a widow claims pension under act of June 27, 1890, for herself and her minor child, and afterwards files an affidavit declaring for children of the soldier by a former marriage and the guardian of such children files another declaration claiming on their account: *Held*, That the two declarations constitute but one claim, for which but one fee can be paid. Reaffirming case of *Sarah Clark*, 7 P. D., 47. *Hattie G. Dyer* (Asst. Sec. Reynolds), 7 P. D., 160.

See also ABANDONMENT; ACCRUED PENSION; BOUNTY LAND; COMMENCEMENT; DIVORCE; INCREASE; LIMITATIONS; MARRIAGE; MILITIA; NONRESIDENTS; RATING; REMARRIAGE; REBATING; RETIRED OFFICERS; SPECIAL ACT.

WINNEBAGO DISTURBANCES.

See BOUNTY LAND (Service).

WITHDRAWING FILES.**Discharge certificate.**

A discharge filed in a pension claim can not be withdrawn, but a certified copy thereof will be furnished on application. *Communication to J. E. Tenney, in re George Randall* (Sec. Stuart), 2 L. B. P., 9.

A discharge certificate filed as evidence in a bounty-land claim in which warrant is issued can not be withdrawn; but if in any case it becomes necessary to use the original discharge before a tribunal or officer of the Government for the establishment of a right, upon an affidavit being filed by the party, showing the purpose for which it is required, specifying also the tribunal or officer before whom and where it is to be used, the Department will cause it to be transmitted to such tribunal or officer, to be returned to the Department after the object of its transmission shall have been attained. *George W. Strong* (Sec. Browning), 6 L. B. P., 181.

WITHHOLDING PAYMENT.

See DEPENDENT RELATIVES; REIMBURSEMENT; SUSPENSION.

WITNESSES

1. Age as affecting competency.
2. Names of, not to be furnished.

1. Age as affecting competency.

Children at nine and eleven are too young to testify to a term of service. *Widow of David Doremus* (Sec. Ewing), 1 L. B. P., 124.

2. Names of, not to be furnished.

Names of witnesses testifying adversely to the claim will not be furnished to parties in interest. *William A. Hill* (Sec. Schurz), 11 L. B. P., 446.

See also **FEE CONTRACTS.**

SUPPLEMENT.

A.—PENSION LAWS.

B.—REPEALED PENSION LAWS.

C.—BOUNTY LAND LAWS.

D.—RULES OF PRACTICE.

A.—PENSION LAWS.

REFERENCE TABLE.

[Showing the sections of the Revised Statutes and the resolutions and acts of Congress embraced in the arrangement and consolidation of the pension laws, following.]

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Chapter.

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CHAPTER I.

THE PENSION BUREAU, ITS OFFICERS AND EMPLOYEES.

Section.

1. Department of the Interior.
2. Departmental Employees.
3. Commissioner of Pensions.
4. Duties of the Commissioner.
5. First and Second Deputy Commissioners.
6. Duties of Chief Clerk.

Section.

7. Appointment of Medical Referee.
8. Salaries in Pension Bureau.
9. Clerk to sign Commissioner's name.
10. Inspection of Pension Agencies and Examining Boards.
11. Printed Instructions and Forms.

Sec. 437, R. S.

SECTION 1. DEPARTMENT OF THE INTERIOR.—(a) There shall be at the seat of Government an Executive Department, to be known as the

Department of the Interior, and a Secretary of the Interior, who shall be the head thereof.

(b) The Secretary of the Interior is charged, among other things, with the supervision of public business relating to pensions and bounty lands. Sec. 441, R. S.

(c) The heads of department who may severally be charged with the administration of the pension laws of the United States of America are hereby, respectively, directed and required, as soon as may be after the opening of each session of Congress, to present to the Senate and House of Representatives, a several list of such persons, whether Revolutionary, invalid, or otherwise, as shall have made application for a pension, or an increase of pension, and as, in their opinion, respectively, ought to be placed upon the pension roll or otherwise provided for, and for doing which they have no sufficient power or authority, with the names and residence of such persons, the capacity in which they served, the degree of relief proposed, and a brief statement of the grounds thereof, to the end that Congress may consider the same. Rea. May 29,
1830, Vol. 4, p.
430.

(d) The Secretary of the Interior is hereby authorized, if in his opinion the public interests will not suffer thereby, upon the request of either of the committees hereinafter named, to detail from that Department one clerk to act as assistant clerk to the House Committee on Pensions and one clerk to act as assistant clerk to the House Committee on Invalid Pensions. Rea. Feb. 1,
1884, Vol. 23, p.
266.

SEC. 2. DEPARTMENTAL EMPLOYEES.—(a) Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year. Sec. 169, R. S.

(b) For the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, there shall be nine members of a board of pension appeals, to be appointed by the Secretary of the Interior, at two thousand dollars each. Act Feb. 19,
1897, Vol. 29, p.
568.

SEC. 3. COMMISSIONER OF PENSIONS.—There shall be in the Department of the Interior a Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive a salary of five thousand dollars a year. Sec. 470, R. S.

SEC. 4. DUTIES OF THE COMMISSIONER OF PENSIONS.—The Commissioner of Pensions shall perform, under the direction of the Secretary of the Interior, such duties in the execution of the various pension and bounty-land laws as may be prescribed by the President. Act Mar. 3,
1881, Vol. 21, p.
408.

SEC. 5. FIRST AND SECOND DEPUTY COMMISSIONERS.—There shall be in the Department of the Interior a First Deputy Commissioner of Pensions and a Second Deputy Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be charged with such duties in the Pension Bureau as may be prescribed by the Secretary of the Interior or may be required by law; and in case of death, resignation, absence, or sickness of the Commissioner his duties shall devolve upon the First Deputy Commissioner until his successor is appointed or such absence or sickness ceases, and in case of like absence of the Commissioner and First Deputy Commissioner the Second Deputy Commissioner shall act as Commissioner in like manner. Sec. 471, R. S.

SEC. 6. FIRST AND SECOND DEPUTY COMMISSIONERS.—There shall be in the Department of the Interior a First Deputy Commissioner of Pensions and a Second Deputy Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be charged with such duties in the Pension Bureau as may be prescribed by the Secretary of the Interior or may be required by law; and in case of death, resignation, absence, or sickness of the Commissioner his duties shall devolve upon the First Deputy Commissioner until his successor is appointed or such absence or sickness ceases, and in case of like absence of the Commissioner and First Deputy Commissioner the Second Deputy Commissioner shall act as Commissioner in like manner. Act Mar. 3,
1881, Vol. 21, p.
408.

SEC. 7. FIRST AND SECOND DEPUTY COMMISSIONERS.—There shall be in the Department of the Interior a First Deputy Commissioner of Pensions and a Second Deputy Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be charged with such duties in the Pension Bureau as may be prescribed by the Secretary of the Interior or may be required by law; and in case of death, resignation, absence, or sickness of the Commissioner his duties shall devolve upon the First Deputy Commissioner until his successor is appointed or such absence or sickness ceases, and in case of like absence of the Commissioner and First Deputy Commissioner the Second Deputy Commissioner shall act as Commissioner in like manner. Act Aug. 5,
1882, Vol. 22, p.
248.

Sec. 173, R. S.

SEC. 6. DUTIES OF CHIEF CLERK.—Each chief clerk in the several Departments and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully

Sec. 714, R. S.

performed. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

Sec. 4776, R. S.

SEC. 7. APPOINTMENT OF MEDICAL REFEREE.—The Secretary of the Interior is authorized to appoint a duly qualified surgeon as medical referee, who, under the control and direction of the Commissioner of Pensions, shall have charge of the examination and revision of the reports of examining surgeons, and such other duties touching medical and surgical questions in the Pension Office as the interests of the service may demand.

Act Feb. 19,
1897, Vol. 29, p.
568.

SEC. 8. SALARIES IN THE PENSION BUREAU.—For the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, the number and salaries of officers and employees of the Pension Bureau shall be as follows: The Commissioner of Pensions, five thousand dollars; First Deputy Commissioner, three thousand six hundred dollars; Second Deputy Commissioner, three thousand six hundred dollars; chief clerk, two thousand two hundred and fifty dollars; assistant chief clerk, two thousand dollars; medical referee, three thousand dollars; assistant medical referee, two thousand two hundred and fifty dollars; two qualified surgeons, who shall be experts in their profession, at two thousand dollars each; thirty-eight medical examiners, who shall be surgeons of education, skill, and experience in their profession, at one thousand eight hundred dollars each; ten chiefs of divisions, at two thousand dollars each; law clerk, two thousand dollars; fifty-eight principal examiners, at two thousand dollars each; twenty assistant chiefs of division, at one thousand eight hundred dollars each; three stenographers, at one thousand six hundred dollars each; seventy clerks of class four; eighty-five clerks of class three; three hundred and fifty clerks of class two; four hundred and thirty-eight clerks of class one; two hundred and eighty-seven clerks, at one thousand dollars each; one superintendent of building, one thousand four hundred dollars; two engineers, at one thousand two hundred dollars each; one hundred and seventy-five copyists; thirty-three messengers; twelve assistant messengers; twenty messenger boys, at four hundred dollars each; one painter, skilled in his trade, nine hundred dollars; one cabinetmaker, skilled in his trade, nine hundred dollars; one captain of the watch, eight hundred and forty dollars; three sergeants of the watch, at seven hundred and fifty dollars each; twenty watchmen; three firemen; twenty-five laborers; five female laborers, at four hundred dollars each; and fifteen charwomen; and also one hundred and fifty special examiners for one year, at a salary of one thousand three hundred dollars each; and no person so appointed shall be employed in the State from which he is appointed; and any of those now employed in the Pension Office or as special examiners may be reappointed if they be found to be qualified: *Provided*, That two special examiners

or clerks detailed and acting as chief and assistant chief of the division of special examiners may be allowed, in addition to their salaries and in lieu of per diem and all expenses for subsistence, a sum sufficient to make their annual compensation two thousand dollars and one thousand eight hundred dollars, respectively. And whenever it may be necessary for either of them to travel on official business outside the District of Columbia by special direction of the Commissioner, he shall receive the same allowance in lieu of subsistence and for transportation as is provided for special examiners and detailed clerks engaged in field service.

SEC. 9. CLERK TO SIGN COMMISSIONER'S NAME.—The Commissioner of Pensions is authorized, with the approval of the Secretary of the Interior, to appoint a person to sign the name of the Commissioner to certificates or warrants for bounty lands, and certificates or warrants so signed shall be as valid as if signed by the Commissioner. Sec. 473, R. S.

SEC. 10. INSPECTION OF PENSION AGENCIES AND EXAMINING BOARDS.—The Commissioner of Pensions may, when in his judgment it shall be deemed necessary or proper, visit in person, for the purpose of examination and inspection, or may send any one or more of the officers of his Bureau for that purpose, any of the pension agencies or medical examining boards or surgeons; and the necessary and actual expenses of such visits shall be paid by the Secretary of the Interior, upon properly executed vouchers, out of the contingent fund of said Bureau. Act Aug. 3, 1882, amending sec. 4736, R. S., Vol. 22, p. 374.

SEC. 11. PRINTED INSTRUCTIONS AND FORMS.—The Commissioner of Pensions, on application being made to him in person or by letter by any claimant or applicant for pension, bounty land, or other allowance required by law to be adjusted or paid by the Pension Office, shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing and obtaining such claim; and on the issuing of a certificate of pension or of a bounty-land warrant he shall forthwith notify the claimant or applicant, and also the agent or attorney in the case, if there be one, that such certificate has been issued or allowance made, and the date and amount thereof. Sec. 4748, R. S.

CHAPTER II.

EXAMINING SURGEONS.

Section.	Section.
12. Appointment and fees of Examining Surgeons.	14. Examinations by Civil Surgeons.
13. Special Medical Examinations.	15. Biennial Examinations Abolished.

SEC. 12. APPOINTMENT AND FEES OF EXAMINING SURGEONS.—(a) The Commissioner of Pensions is hereby authorized to appoint surgeons who, under his control and direction, shall make such examination of pensioners and claimants for pension or increased pension as he shall require; and he shall organize boards of surgeons, to consist of three members each, at such points in each State as he shall deem necessary, and all examinations, so far as practicable, shall be made by the boards, and no examination shall be made by one surgeon, excepting under such circumstances as make it impracticable for a claimant to present himself before a board: *Provided*, That the Commissioner may, when in his opinion the exigencies of the service require it, organize a board of three surgeons, who, under his direction, shall review the work of any regularly appointed board or Sec. 4 of the act July 25, 1882, Vol. 22, p. 175.

surgeon: *Provided further*, That all examinations shall be thorough and searching, and the certificate contain a full description of the physical condition of the claimant at the time, which shall include all the physical and rational signs and a statement of all structural changes.

(b) The Commissioner may, when in his judgment the degree of disability can not be determined truthfully or satisfactorily excepting by expert examination, employ an expert, not a regularly appointed surgeon, to make the examination; and the fee for such examination shall be five dollars: *Provided*, That the fee for an expert examination shall not be paid to any regularly appointed examining surgeon.

(c) The fee for the examination of claimants who reside out of the United States shall not exceed ten dollars, which shall be paid, upon the presentation of satisfactory vouchers, out of the appropriation for the payment of the examining surgeons, and through the United States consulate nearest to the claimant's place of residence.

Act June 30, 1890, Vol. 26, p. 188. (d) Each member of each examining board shall receive the sum of two dollars for the examination of each applicant whenever five or a less number shall be examined on any one day, and one dollar for the examination of each additional applicant on such day: *Provided*, That if twenty or more applicants appear on one day, no fewer than twenty shall, if practicable, be examined on said day; and that if fewer exami-

Act July 18, 1894, Vol. 28, p. 113. nations be then made, twenty or more having appeared, then there shall be paid for the first examinations made on the next examination day the fee of one dollar only until twenty examinations shall have been made: *Provided*, That the report of such examining surgeons when filed in the Pension Office shall be open to the examination and inspection of the claimant or his attorney, under such reasonable rules and regulations as the Secretary of the Interior may provide.

Sec. 4 of the act July 25, 1882, Vol. 22, p. 175. (e) When a claimant is so disabled as not to be able to present himself to a board of surgeons for examination, the Commissioner may order a surgeon to make the examination at the claimant's residence; and the fee for such examination shall be two dollars, in addition to

Act Mar. 2, 1895, Vol. 28, p. 703. the payment of the actual traveling expenses of the surgeon: *Provided further*, That no fee shall be paid to any member of an examining board unless personally present and assisting in the examination of applicant: *Provided*, That the report of such examining surgeons shall specifically state the rating which in their judgment the applicant is entitled to.

Sec. 4775, R. S. SEC. 13. SPECIAL MEDICAL EXAMINATIONS.—Examining surgeons duly appointed by the Commissioner of Pensions, and such other qualified surgeons as may be employed in the Pension Office, may be required by him, from time to time, as he deems for the interests of the Government, to make special examinations of pensioners or applicants for pension, and such examinations shall have precedence over previous examinations, whether special or biennial; but when injustice is alleged to have been done by an examination so ordered the Commissioner of Pensions may, at his discretion, select a board of three duly appointed examining surgeons who shall meet at a place to be designated by him, and shall review such cases as may be ordered before them on appeal from any special examination, and the decision of such board shall be final on the question so submitted thereto, provided the Commissioner approve the same. The compensation of each of such surgeons shall be three dollars, and shall be paid out of any appropriations made for the payment of pensions, in the same manner as the ordinary fees of appointed surgeons are or may be authorized to be paid.

SEC. 14. EXAMINATIONS BY CIVIL SURGEONS.—The Commissioner of Pensions is empowered to appoint, at his discretion, civil surgeons to make the periodical examinations of pensioners which are or may be required by law, and to examine applicants for pension where he deems an examination by a surgeon appointed by him necessary; and the fee for such examinations, and the requisite certificates thereof, in duplicate, shall be two dollars, which shall be paid by the agent for paying pensions in the district within which the pensioner or claimant resides, out of any money appropriated for the payment of pensions, under such regulations as the Commissioner of Pensions may prescribe. Sec. 4777, R. S.

SEC. 15. BIENNIAL EXAMINATIONS ABOLISHED.—Sections forty-seven hundred and seventy-one, forty-seven hundred and seventy-two, and forty-seven hundred and seventy-three of the Revised Statutes of the United States, providing for biennial examinations of pensioners, are hereby repealed: *Provided*, That the Commissioner of Pensions shall have the same power as heretofore to order special examinations whenever, in his judgment, the same may be necessary, and to increase or reduce the pension according to right and justice; but in no case shall a pension be withdrawn or reduced except upon notice to the pensioner and a hearing upon sworn testimony, except as to the certificate of the examining surgeon. Sec. 3 of the act June 21, 1879, Vol. 21, p. 80.

CHAPTER III.

PENSION AGENTS AND PAYMENT OF PENSIONS.

Section.	Section.
16. Appointment of Pension Agents.	25. Payment to Inmates of National Home for Disabled Volunteer Soldiers.
17. Temporary Provision for Vacancies.	26. Payment to Certain Inmates of the Government Hospital for the Insane.
18. Clerk to sign Pension Agent's Name.	26½. Navy Pensioner Admitted to Navy Hospital.
19. Establishment of Pension Agencies.	27. Payment to Inmates of the Soldiers' Home, at Washington, D. C.
20. Salary, Clerk hire, and Expenses.	28. Duplicate of Check when lost or destroyed.
21. Time and Manner of Making Payments.	
22. Personal Payments at Pension Agency—Repeal.	
23. Printed Forms for Vouchers.	
24. Payments to Indians, Foreigners, and Persons Insane or Imprisoned.	

SEC. 16. APPOINTMENT OF PENSION AGENTS.—The President is authorized to appoint, by and with the advice and consent of the Senate, all pension agents, who shall hold their respective offices for the term of four years, unless sooner removed or suspended, as provided by law, and until their successors are appointed and qualified. All pension agents shall give bond, with good and sufficient sureties, for such amount and in such form as the Secretary of the Interior may approve. Sec. 4778, R. S.

SEC. 17. TEMPORARY PROVISION FOR VACANCIES.—Whenever during a session of the Senate a vacancy shall occur in the office of pension agent by reason of resignation, death, removal, or expiration of the term of office, or where any such agent lawfully appointed shall have failed to qualify and assume the duties of such office, the President may, when the public exigency requires it, designate any officer of the United States to perform the duties of such office, but such designation shall not be for a longer time than twenty days, and such officer so designated shall give bonds, if required by the President, for the faithful discharge of the said duties, and the Secretary of the Interior shall allow in the settlement of the accounts of such officer the necessary expenses incurred by him in the discharge of his duties under this section. The foregoing provisions shall apply to any vacancy now existing. Act of Mar. 3, 1878, Vol. 20, p. 26.
Sec. 4779, R. S.

Act June 30,
1890, Vol. 26, p.
183, as modified
by act July 18,
1894, Vol. 28, p.
113.

SEC. 18. CLERK TO SIGN PENSION AGENT'S NAME.—In case of sickness or unavoidable absence of any pension agent from his office he may, with the approval of the Secretary of the Interior, authorize the chief clerk, or some other clerk employed therein, to act in his place, to sign official checks, and to discharge all the other duties required by law of such pension agent; and any pension agent may designate and authorize a clerk to sign the name of the pension agent to official checks; but the appointment of the clerk to sign official checks, who shall receive the same compensation at each agency as was paid during the fiscal year ending June thirtieth, eighteen hundred and ninety-four, shall be made by the pension agent without other or further approval. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases, and a new bond shall be required subsequent to June thirtieth, eighteen hundred and ninety, from all pension agents then in office. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the pension agent for whom he acts.

Sec. 4780, R. S.

SEC. 19. ESTABLISHMENT OF PENSION AGENCIES.—The President is authorized to establish agencies for the payment of pensions wherever, in his judgment, the public interests and the convenience of the pensioners require; but the number of pension agencies in any State or Territory shall in no case be increased hereafter so as to exceed three, and no such agency shall be established in addition to those now existing in any State or Territory in which the whole amount of pensions paid during the fiscal year next preceding shall not have exceeded the sum of five hundred thousand dollars.

Act Mar. 3, 1885,
Vol. 23, p. 362.

SEC. 20. SALARY, CLERK HIRE, AND EXPENSES.—From and after June thirtieth, eighteen hundred and eighty-five, the salary and emoluments of agents for the payment of pensions shall be four thousand dollars, and no more, per annum, and the amount of clerk hire at each agency shall be apportioned as nearly as practicable in proportion to the number of pensioners paid at each agency, and the salaries paid shall be subject to the approval of the Secretary of the Interior. The expenditures for stationery and other necessary expenses shall also be approved by the Secretary of the Interior, and the Secretary of the Treasury, where practicable, shall cause suitable rooms to be set apart in the public buildings under his control in the cities where pension agencies are located, which shall be acceptable to the Secretary of the Interior, for the use and occupancy of the said agencies, respectively.

Act June 30,
1890, Vol. 26, p.
189.

Sec. 2, act of
Mar. 3, 1891, Vol.
26, p. 1062.

SEC. 21. TIME AND MANNER OF MAKING PAYMENTS.—The Secretary of the Interior is hereby authorized and directed to arrange the various agencies for the payment of pensions in three groups, as he may think proper, and may, from time to time, change any agency from one group to another, as he may deem convenient for the transaction of the public business. The first group shall make their quarterly payments of pensions on January fourth, April fourth, July fourth, and October fourth of each year; the second group shall make their quarterly payments of pensions on February fourth, May fourth, August fourth, and November fourth of each year; and the third group shall make their quarterly payments of pensions on March fourth, June fourth, September fourth, and December fourth of each year; and the Secretary of the Interior is hereby fully authorized to cause payments of

pensions to be made for the fractional parts of quarters created by the change from former methods of paying pensions, so as to properly adjust all payments as herein provided.

Within fifteen days immediately preceding the fourth day of each month in which quarterly payment of pensions is to be made at the several agencies as hereinbefore provided for, each agent for the payment of pensions shall prepare a quarterly voucher for every person whose pension is payable at his agency, and transmit the same by mail, directed to the address of the pensioner named in such voucher, who, on or after the date on which the payment of such quarterly pension is herein authorized to be made, may execute and return the same to the agency at which it was prepared and at which the pension of such person is due and payable. Upon the receipt of such voucher, properly executed, and the identity of the pensioner being established and proved in the manner prescribed by the Secretary of the Interior, the agent for the payment of pensions shall immediately draw his check on the proper assistant treasurer or designated depository of the United States for the amount due such pensioner, payable to his order, and transmit the same by mail, directed to the address of the pensioner entitled thereto; but any pensioner may be required, if thought proper by the Commissioner of Pensions, to appear personally and receive his pension.

Sec. 4764, R. S.,
as modified by
act Mar. 3, 1891,
Vol. 26, p. 1082.

Sec. 4765, R. S.

SEC. 22. PERSONAL PAYMENTS AT PENSION AGENCY—REPEAL.—Section six of an act entitled "An Act to define the duties of pension agents, to prescribe the manner of paying pensions, and for other purposes," approved July 8, 1870, and now being section forty-seven hundred and eighty-four, Revised Statutes of the United States, is hereby repealed.

Sec. 4784, R. S.,
repealed, act Mar.
23, 1890, Vol. 29,
p. 74.

SEC. 23. PRINTED FORMS FOR VOUCHERS.—The Secretary of the Interior shall cause suitable blanks for the vouchers mentioned in section twenty-one of this Act to be printed and distributed to the agents for the payment of pensions, upon which he shall cause a note to be printed, informing pensioners of the fact that hereafter no pension will be paid except upon the vouchers issued as herein directed.

Sec. 4767, R. S.

SEC. 24. PAYMENT TO INDIANS, FOREIGNERS, AND PERSONS INSANE OR IMPRISONED.—Hereafter no pension shall be paid to any person other than the pensioner entitled thereto, nor otherwise than according to the provisions of this Act; and no warrant, power of attorney, or other paper executed or purporting to be executed by any pensioner to any attorney, claim agent, broker, or other person shall be recognized by any agent for the payment of pensions, nor shall any pension be paid thereon; but the payment to persons laboring under legal disabilities may be made to the guardians of such persons in the manner herein prescribed, and pensions payable to persons in foreign countries may be made according to the provisions of existing laws: *Provided*, That in case of an insane invalid pensioner having no guardian, but having a wife or children dependent upon him (the wife being a woman of good character), the Commissioner of Pensions is hereby authorized, in his discretion, to cause the pension to be paid to the wife, upon her properly executed voucher, or in case there is no wife, to the guardian of the children, upon the properly executed voucher of such guardian, and in like manner to cause the pension of invalid pensioners, who are or may hereafter be imprisoned as punishment for offenses against the laws, to be paid, while so imprisoned, to their wives or the guardians of their children.

Sec. 4766, R. S.,
amended by act
Aug. 8, 1882, Vol.
22, p. 373.

Act July 13, 1892, Vol. 27, p. 120. And pensions to Indian pensioners residing in the Indian Territory may be paid in person by the pension agent, upon a suitable voucher, at some convenient point in said Territory, which, together with the form and manner of identification of the pensioners, may be prescribed by the Secretary of the Interior; such payments to be made in standard silver at least once in each current year. And payments in person shall be made to the pensioner in cash by the pension agent whenever in the discretion of the Commissioner of Pensions such personal payment shall be by him deemed necessary or proper to secure to the pensioner his rights; and the necessary and actual expenses of such

Contingent pension agent in making such payments shall be approved by the Secretary of the Interior and paid upon properly executed vouchers out of the fund appropriated for the necessary expenses of the pension agencies.

Sec. 2, act of Feb. 26, 1891, Vol. 21, p. 350, and act Aug. 7, 1892, Vol. 22, p. 322. SEC. 25. PAYMENT TO INMATES OF NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.—All pensions and arrears of pension payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurer or treasurers of said Home, upon security given to the satisfaction of the managers, to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the Home; said payment to be made by the pension agent upon a certificate of the proper officer of the Home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the Home, the same shall be paid to the widow or children, or in default of either, to his legal representatives.

Act Aug. 7, 1892, Vol. 22, p. 330. SEC. 26. PAYMENT TO CERTAIN INMATES OF THE GOVERNMENT HOSPITAL FOR THE INSANE.—If any inmate of the Government Hospital for the Insane who has been admitted according to law from the National Home for Disabled Volunteer Soldiers is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital and be paid over to the proper officer of said institution for the general uses thereof.

Sec. 4813, R. S. SEC. 26½. NAVY PENSIONER ADMITTED TO NAVY HOSPITAL.—Whenever any navy officer, seaman or marine, entitled to a pension, is admitted to a navy hospital, the pension during his continuance in the hospital shall be paid to the Secretary of the Navy and deducted from the account of such pensioner.

Sec. 4, act Mar. 3, 1883, Vol. 22, p. 564. SEC. 27. PAYMENT TO INMATES OF THE SOLDIERS' HOME AT WASHINGTON, DISTRICT OF COLUMBIA.—Any inmate of the Soldiers' Home at Washington, District of Columbia, who is receiving a pension from the Government and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part

of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The Board of Commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years, otherwise the same shall escheat to the Home.

SEC. 28. DUPLICATE OF CHECK WHEN LOST OR DESTROYED.—Sec. 3646, R. S., as amended by act Feb. 16, 1885, Vol. 23, p. 306. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of twenty-five hundred dollars.

CHAPTER IV.

ACCRUED AND UNCLAIMED PENSION.

Section.

29. To whom Accrued Pension Paid—
Reimbursement.
30. When Payment of Pension is Complete.

Section.

31. Disposition of Unclaimed Pension.

SEC. 29. TO WHOM ACCRUED PENSION PAID—REIMBURSEMENT.—Act Mar. 2, 1895, Vol. 28, p. 964. From and after the twenty-eighth day of September, eighteen hundred and ninety-two, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned, or applying for pension, on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of sixteen years at his death; third, in case of a widow, to her minor children under the age of sixteen years at her death. Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of the debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense.

SEC. 30. WHEN PAYMENT OF PENSION IS COMPLETE.—Act Mar. 2, 1895, Vol. 28, p. 965. The mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner, shall constitute payment in

the event of the death of a pensioner subsequent to the execution of the voucher therefor. And all laws prior to March second, eighteen hundred and ninety-five, relating to the payment of accrued pension are hereby repealed.

Sec. 4719, R. S. SEC. 31. DISPOSITION OF UNCLAIMED PENSION.—The failure of any pensioner to claim his pension for three years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, recovery from the disability, or otherwise, and the pensioner's name shall be stricken from the list of pensioners, subject to the right of restoration to the same on a new application by the pensioner, or if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension, and by medical evidence, in cases of invalids who were not exempt from biennial examinations, as to the continuance of the disability.

CHAPTER V.

OATHS AND EXECUTION OF PAPERS.

Section.	Section.
32. Execution of Declarations and Other Papers.	38. Oath may be Taken Before Notary or Commissioner.
33. Indian Claims; Oath of Allegiance not Required.	39. Fourth-class Postmasters may Administer Oaths in Certain Cases.
34. Detailed Clerks may Administer Oath.	40. Certain Oaths Administered Free of Charge.
35. Special Examiners may Administer Oath.	41. Chief Clerk to Administer Oath of Office Free.
36. Subpoenas for Witnesses.	
37. Process to Enforce Obedience to Subpoena.	

Act July 26,
1892, Vol. 27, p.
272.

SEC. 32. EXECUTION OF DECLARATIONS AND OTHER PAPERS.—(a) Declarations of pension claimants shall be made before a court of record or before some officer thereof having custody of its seal, or before some officer who, under the laws of his State, city, or county, has authority to administer oaths for general purposes; and said officers are hereby fully authorized and empowered to administer and certify any oath or affirmation relating to any pension or application therefor: *Provided*, That where such declaration or other papers are executed before an officer authorized as above, but not required by the laws of his State to have and use a seal to authenticate his official acts, he shall file in the Pension Bureau a certificate of his official character, showing his official signature and term of office, certified by a clerk of a court of record, or other proper officer of the State, as to the genuineness thereof; and when said certificate has been filed in the Bureau of Pensions his own certificate will be recognized during his term of office.

(b) The Commissioner of Pensions may accept declarations and other papers of claimants residing in foreign countries, made before a United States minister or consul or other consular officer, or before some officer of the country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister or consul or other consular officer; and declarations in claims of Indians may be made before a United States Indian agent.

(c) Any and all declarations or affidavits now on file in the Pension Bureau which are considered informal by reason of not having been executed in conformity to the laws heretofore in force covering such, and in which it is shown or may be hereafter shown by proper evidence that the same were executed by and before an officer who was duly authorized to administer oaths for general purposes at said date of execution, shall be accepted as formal as from the date of filing such declarations or affidavits.

(d) All acts and parts of acts inconsistent with the provisions of this section are hereby repealed.

SEC. 33. INDIAN CLAIMS; OATH OF ALLEGIANCE NOT REQUIRED.— Sec. 4721, R. S.

All proof which has heretofore been taken before an Indian agent, or before an officer of any tribe, competent according to the rules of said tribe to administer oaths, shall be held and regarded by the Pension Office, in the examining and determining of claims of Indians now on file, as of the same validity as if taken before an officer recognized by the law at the time as competent to administer oaths; all proof wanting in said claims hereafter, as well as in those filed after the third day of March, eighteen hundred and seventy-three, shall be taken before the agent of the tribe to which the claimants, respectively, belong; in regard to dates, all applications of Indians now on file shall be treated as though they were made before a competent officer at their respective dates, and if found to be in all other respects conclusive, they shall be allowed; and Indians shall be exempted from the obligation to take the oath to support the Constitution of the United States.

SEC. 34. DETAILED CLERKS MAY ADMINISTER OATH.—The Commissioner of Pensions is authorized to detail from time to time clerks or persons employed in his office to make special examinations into the merits of such pension or bounty-land claims, whether pending or adjudicated, as he may deem proper, and to aid in the prosecution of any party appearing on such examinations to be guilty of fraud, either in the presentation or in procuring the allowance of such claims; and any person so detailed shall have power to administer oaths and take affidavits and depositions in the course of such examinations, and to orally examine witnesses, and may employ a stenographer, when deemed necessary by the Commissioner of Pensions, in important cases, such stenographer to be paid by such clerk or person, and the amount so paid to be allowed in his accounts. Sec. 4744, R. S., as amended by act July 25, 1882, Vol. 22, p. 175.

SEC. 35. SPECIAL EXAMINERS MAY ADMINISTER OATH.—The same power to administer oaths and take affidavits which, by virtue of the preceding section, is conferred upon clerks detailed by the Commissioner of Pensions from his office to investigate suspected attempts at fraud on the Government through and by virtue of the pension laws, and to aid in prosecuting any person so offending, shall be, and is hereby, extended to all special examiners or additional special examiners employed under authority of Congress to aid in the same purpose. Sec. 3, act of Mar. 3, 1891, Vol. 26, p. 1063.

SEC. 36. SUBPENAS FOR WITNESSES.—Any judge or clerk of any court of the United States in any State, District, or Territory shall have power, upon the application of the Commissioner of Pensions, to issue a subpoena for a witness, being within the jurisdiction of such court, to appear (at a time and place in the subpoena stated) before any officer authorized to take depositions to be used in the courts of the United States, or before any officer, clerk, or person from the Sec. 3 of the act July 25, 1882, Vol. 22, p. 175.

Pension Bureau designated or detailed to investigate or examine into the merits of any pension claim and authorized by law to administer oaths and take affidavits in such investigation or examination, there to give full and true answers to such written interrogatories and cross-interrogatories as may be propounded, or to be orally examined and cross-examined upon the subject of such claim; and witnesses subpoenaed pursuant to this and the two preceding sections shall be allowed the same compensation as is allowed witnesses in the courts of the United States and paid in the same manner.

Sec. 186, R. S.

SEC. 37. PROCESS TO ENFORCE OBEDIENCE TO SUBPENA.—If any witness, after being duly served with such subpoena, neglects or refuses to appear, or appearing refuses to testify, the judge of the district in which the subpoena is issued may proceed, upon proper process, to enforce obedience to the subpoena, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpoena ad testificandum issued by such court.

Sec. 1778, R. S.

SEC. 38. OATHS MAY BE TAKEN BEFORE NOTARY OR COMMISSIONER.—In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made before or by any notary public duly appointed in any State, District, or Territory, or any of the commissioners of the circuit courts, and when certified under the hand and official seal of such notary or commissioner shall have the same force and effect as if taken or made by or before such justice of the peace.

Act Aug. 23,
1894, Vol. 28, p.
499.

SEC. 38½. FOURTH-CLASS POSTMASTERS MAY ADMINISTER OATH IN CERTAIN CASES.—Hereafter, in addition to the officers now authorized to administer oaths in such cases, fourth-class postmasters of the United States are hereby required, empowered, and authorized to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers with like effect and force as officers having a seal; and such postmaster shall affix the stamp of his office to his signature to such vouchers, and he is authorized to charge and receive for each voucher not exceeding twenty-five cents, to be paid by the pensioner.

Act June 7,
1888, Vol. 25, p.
174.

SEC. 39. CERTAIN OATHS ADMINISTERED FREE OF CHARGE.—All United States officers now authorized to administer oaths are hereby required and directed to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers for their pensions free of charge, except as provided in the last preceding section.

Act Mar. 1,
1889, Vol. 25, p.
782.

Act Aug. 29,
1890, Vol. 26, p.
371.

SEC. 40. CHIEF CLERK TO ADMINISTER OATH OF OFFICE FREE.—No officer, clerk, or employee of any Executive Department who is also a notary public or other officer authorized to administer oaths, shall charge or receive any fee or compensation for administering oaths of office to employees of such Department required to be taken on appointment or promotion therein.

And the chief clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion.

CHAPTER VI.

AGENTS, ATTORNEYS, AND PAYMENT OF FEES.

Section.

41. Attorneys shall take Oath of Allegiance.
42. Act June 20, 1878. Repealed—Contracts not Affected.
43. Commissioner shall Direct Payment of Fees.
44. Fee Agreements, and Amount of Fee Allowed.
45. Secretary to Prescribe Rules for Recognition of Attorneys, etc.

Section.

46. Commissioner to Certify Fees.
47. Fees to be paid by Pension Agent.
48. Fee in Increase and "Special act" Cases.
49. Former Employees in Departments Barred from Practice for Two Years.
50. Government Employees not to Act as Attorneys.

SEC. 41. ATTORNEYS SHALL TAKE OATH OF ALLEGIANCE.—Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance and to support the Constitution of the United States, as required of persons in the civil service. The oath provided for in this section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered.

Sec. 3478, R. S.

Sec. 3479, R. S.

SEC. 42. ACT OF JUNE TWENTIETH, EIGHTEEN HUNDRED AND SEVENTY-EIGHT, REPEALED—CONTRACTS NOT AFFECTED.—The Act entitled "An Act relating to claim agents and attorneys in pension cases," approved June twentieth, eighteen hundred and seventy-eight, is hereby repealed: *Provided, however,* That no fee contracts filed with the Commissioner of Pensions in any case within the period commencing June twentieth, eighteen hundred and seventy-eight, and ending July fourth, eighteen hundred and eighty-four, shall be recognized as valid, but all lawful contracts filed prior to June twentieth, eighteen hundred and seventy-eight, or subsequent to July fourth, eighteen hundred and eighty-four, shall have full force and effect as hereinafter provided; and the lawful fee in cases settled prior to July fourth, eighteen hundred and eighty-four, in which no fee contract was filed prior to June twentieth, eighteen hundred and seventy-eight, shall be ten dollars and no more.

Secs. 1 and 2,
act July 4, 1884,
Vol. 23, p. 99.Act June 20,
1878, Vol. 20, p.
243.

SEC. 43. COMMISSIONER SHALL DIRECT PAYMENT OF FEES.—No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension or bounty-land claim shall be allowed: *Provided,* That in all claims allowed since June twentieth, eighteen hundred and seventy-eight, where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of ten dollars, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension and the pension agent to pay the same to the recognized attorney.

Sec. 4785, R. S.,
as reenacted and
amended by act
July 4, 1884, Vol.
23, p. 99.

SEC. 44. FEE AGREEMENTS, AND AMOUNT OF FEE ALLOWED.—(a) The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions duplicate articles of agreement without additional cost to the claimant, setting forth the fee agreed upon by the parties, which agreement shall be executed in

Sec. 4786, R. S.,
reenacted and
amended by act
July 4, 1884, Vol.
23, p. 99.

the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension or bounty land, and no agreement is filed with the Commissioner as herein provided, the fee shall be ten dollars and no more. And such articles of agreement as may, subsequent to July fourth, eighteen hundred and eighty-four, be filed with the Commissioner of Pensions are not authorized, nor will they be recognized, except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them: *Provided*, That no greater fee than ten dollars shall be demanded, received, or allowed in any claim for pension or bounty land granted by special Act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed: *Provided further*, That from and after March third, eighteen hundred and ninety-one, a fee of two dollars only shall be allowed in certain cases, as prescribed in section forty-eight of this Act: *And provided further*, That no fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any Act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension or of increase of pension may be allowed.

(b) The articles of agreement herein provided for shall be in substance as follows, to wit:

"ARTICLES OF AGREEMENT.

"Whereas I, _____, late a _____ in Company _____, of the _____ Regiment of _____ Volunteers, war of eighteen hundred and sixty-one (or, if the service be different, here state the same), having made application for pension under the laws of the United States:

"Now, this agreement witnesseth, that for and in consideration of services done and to be done in the premises, I hereby agree to allow my attorney, _____, of _____, the fee of _____ dollars, which shall include all amounts to be paid for any service in furtherance of said claim; and said fee shall not be demanded by or payable to my said attorney (or attorneys), in whole or in part, except in case of the granting of my pension by the Commissioner of Pensions; and then the same shall be paid to him (or them) in accordance with the provisions of sections forty-seven hundred and sixty-eight and forty-seven hundred and sixty-nine of the Revised Statutes.

[Claimant's signature.]

[Two witnesses' signatures.]

"STATE OF _____, County of _____, ss:

"Be it known that on this the _____ day of _____, anno Domini eighteen hundred and _____, personally appeared the above-named _____, who, after having had read over to _____, in the hearing and presence of the two attesting witnesses, the contents of the foregoing articles of agreement, voluntarily signed and acknowledged the same to be free act and deed.

[Official signature.]

"And now, to wit, this day of , anno Domini eighteen hundred and , I (or we) accept the provisions contained in the foregoing articles of agreement, and will, to the best of my (or our) ability, endeavor faithfully to represent the interests of the claimant in the premises.

"Witness my (or our) hand the day and year first above written.

[Signature of attorney.]

"STATE OF , County of , ss:

"Personally came , whom I know to be the person he represents himself to be, and who, having signed the above acceptance of agreement, acknowledged the same to be free act and deed."

[Official signature.]

And if in the adjudication of any claim for pension in which such articles of agreement have been, or may hereafter be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed deducting from the fee of ten dollars allowed by law such sum as the claimant shall show that he has paid to his said attorney.

(c) Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for every such offense, be fined not exceeding five hundred dollars or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.

SEC. 45. SECRETARY TO PRESCRIBE RULES FOR RECOGNITION OF ATTORNEYS.—(a) The Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, or attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall, with intent to defraud, in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement.

Sec. 5 of the act
July 4, 1884, Vol.
23, p. 101.

(b) The Commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, provided for in the preceding section, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract.

Sec. 6 of the act
July 4, 1884, Vol.
23, p. 101.

SEC. 46. COMMISSIONER TO CERTIFY FEES.—The Commissioner of Sec. 4768, R. S.

Pensions shall forward the certificate of pension granted in any case to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent; and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney in all cases except those provided for in section forty-eight of this act, in which a fee of two dollars only shall be paid.

Act Mar. 3, 1891,
Vol. 26, p. 1082.

Sec. 4769, R. S.,
as modified by act
Mar. 3, 1895, Vol.
23, p. 362.

SEC. 47. FEES TO BE PAID BY PENSION AGENT.—It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fees so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee.

Act Mar. 3, 1891.
Vol. 26, p. 1082.

SEC. 48. FEE IN INCREASE AND SPECIAL-ACT CASES.—From and after March third, eighteen hundred and ninety-one, no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws: *Provided*, That any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, or who has rendered services in procuring the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws, who shall, directly or indirectly, contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars, or imprisoned not exceeding two years, or both, in the discretion of the court: *Provided, however*, That the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case pending on the third day of March, eighteen hundred and ninety-one, where there was or is an existing lawful contract, express or implied.

Sec. 190, R. S.

SEC. 49. FORMER EMPLOYEES IN DEPARTMENTS BARRED FROM PRACTICE FOR TWO YEARS.—It shall not be lawful for any person appointed after the first day of June, eighteen hundred and seventy-two as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner nor by any means to aid in the prosecution of any such claim within two years next after he shall have ceased to be such officer, clerk, or employee.

Sec. 5498, R. S.

SEC. 50. GOVERNMENT OFFICERS NOT TO ACT AS ATTORNEYS.—Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim

against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim, from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.

CHAPTER VII.

CRIMINAL OFFENSES ARISING OUT OF THE PENSION LAWS.

Section.

51. Pledge or Transfer of Pension Void.
52. False Affidavits and Post-dating Vouchers.
53. Embezzlement of Pension Money.
54. Perjury.
55. Subornation of Perjury.
56. Forgery and Counterfeiting United States Securities.
57. Forging Deed or Power of Attorney, etc.
58. Counterfeiting Bid, Bond, etc.
59. Having Forged Papers in Possession.

Section.

60. False Personation of Claimant, etc.
61. Making or Presenting False Claims.
62. Conspiracy.
63. Illegal Attorney Fees.
64. United States Officer Accepting Bribe.
65. Bribery of any United States Officer.
66. False Personation of Government Officer.
67. Government Officers not to Receive Fee in Pension Claims.
68. Retaining Discharge Papers, etc.

SEC. 51. PLEDGE OR TRANSFER OF PENSION VOID.—Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been or may hereafter be granted, shall be void and of no effect; and any person who shall pledge, or receive as a pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension or pension certificate which has been or may hereafter be granted or issued, or who shall hold the same as collateral security for any debt or promise or upon any pretext of such security or promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions, or a United States pension agent, or any other person authorized by the Commissioner of Pensions or the pensioner to receive the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution.

Sec. 4745, R. S.
amended by act
of Feb. 28, 1883,
Vol. 22, p. 432.

SEC. 52. FALSE AFFIDAVITS AND POST-DATING VOUCHERS.—Every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions, or who knowingly or willfully presents or causes to be presented at any pension agency any power of attorney or other paper required as a voucher in drawing a pension, which paper bears a date subsequent to that on which it was actually signed or executed, shall be punished by a fine not exceeding five hundred dollars or by imprisonment for a term not exceeding three years, or by both.

Sec. 4746, R. S.

SEC. 53. EMBEZZLEMENT OF PENSION MONEY.—Every guardian, conservator, curator, committee, tutor, or other person having charge and custody in a fiduciary capacity of the pension of his ward, who shall

Act Feb. 10,
1891, amending
secs. 4783 and
5486, R. S., Vol.
22, p. 746.

embezzle the same in violation of his trust, or fraudulently convert the same to his own use, shall be punished by fine not exceeding two thousand dollars or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court.

5392, R. S.

SEC. 54. PERJURY.—Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

Sec. 5393, R. S.

SEC. 55. SUBORNATION OF PERJURY.—Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

Sec. 5414, R. S.

SEC. 56. FORGERY AND COUNTERFEITING UNITED STATES SECURITIES, AND SO FORTH.—Every person who, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or security of the United States shall be punished by a fine of not more than five thousand dollars and by imprisonment at hard labor not more than fifteen years.

Sec. 5421, R. S.

SEC. 57. FORGING DEED OR POWER OF ATTORNEY, AND SO FORTH.—Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited, or willingly aids or assists in the false making, altering, forging, or counterfeiting any deed, power of attorney, order, certificate, receipt, or other writing for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money, or who utters or publishes as true, or causes to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or who transmits to or presents at, or causes or procures to be transmitted to or presented at, any office or officer of the Government of the United States any deed, power of attorney, order, certificate, receipt, or other writing in support of or in relation to any account or claim with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be imprisoned at hard labor for a period of not less than one year nor more than ten years, or shall be imprisoned not more than five years and fined not more than one thousand dollars.

Sec. 5479, R. S.;
Sec. 5413, R. S.

SEC. 58. COUNTERFEITING BID, BOND, AND SO FORTH.—If any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting any bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States, or shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States,

knowing the same to be false, forged, altered, or counterfeited, or shall transmit to or present at, or cause or procure to be transmitted to or presented at the office of any officer of the United States any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such punishments.

SEC. 59. HAVING FORGED PAPERS IN POSSESSION.—Every person who knowingly, and with intent to defraud the United States, has in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing for the purpose of enabling another to obtain from the United States, or any of their officers or agents, any sum of money, shall be fined and imprisoned at the discretion of the court.

Sec. 5422, R. S.

SEC. 60. FALSE PERSONATION OF CLAIMANT, AND SO FORTH.—Every person who falsely personates any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize-money, wages, or other debt due from the United States, and, under color of such false personation, transfers or endeavors to transfer such public stock or any part thereof, or receives or endeavors to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be punished by a fine of not more than five thousand dollars and by imprisonment at hard labor not more than ten years.

Sec. 5435, R. S.

SEC. 61. MAKING OR PRESENTING FALSE CLAIMS.—Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any Department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equip-

Sec. 5438, R. S.

ments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

Sec. 5440, R. S. SEC. 62. CONSPIRACY.—If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years.

Sec. 5485, R. S. SEC. 63. ILLEGAL ATTORNEY FEES.—Any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall, directly or indirectly, contract for, demand, or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is provided in this Act, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a high misdemeanor, and upon conviction thereof shall for every such offense be fined not exceeding five hundred dollars or imprisoned at hard labor not exceeding two years, or both, at the discretion of the court.

Sec. 5501, R. S. SEC. 64. UNITED STATES OFFICER ACCEPTING BRIBE.—Every officer of the United States, and every person acting for or on behalf of the United States in any official capacity, under or by virtue of the authority of any Department or office of the Government thereof, and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House or of both Houses thereof, who asks, accepts, or receives any money or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity or in his place of trust or profit, influenced thereby, shall be punished by a fine not more than three times the amount asked, accepted, or received, and by imprisonment not more than three years.

Sec. 5451, R. S. SEC. 65. BRIBERY OF ANY UNITED STATES OFFICER.—Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any Department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce

him to do or omit to do any act in violation of his lawful duty, shall be punished by fine not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and shall be, moreover, imprisoned not more than three years. Sec. 5450, R. S.

SEC. 66. FALSE PERSONATION OF GOVERNMENT OFFICER.—Every person who, with intent to defraud either the United States or any person, falsely assumes or pretends to be an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof, and who shall take upon himself to act as such, or who shall in such pretended character demand or obtain from any person or from the United States, or any Department or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars or imprisonment longer than three years, or both said punishments, in the discretion of the court. Act Apr. 18, 1884, Vol. 23, p. 11.

SEC. 67. GOVERNMENT OFFICERS NOT TO RECEIVE FEE IN PENSION CLAIMS.—No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department or other officer or clerk in the employ of the Government shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States. Sec. 1782, R. S.

SEC. 68. RETAINING DISCHARGE PAPERS, AND SO FORTH.—Any claim agent, attorney, or other person engaged in the collection of claims for pay, bounty, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or who may have been a soldier, sailor, marine, or officer of the regular volunteer forces of the United States, and honorably discharged, who shall retain, without the consent of the owner or owners thereof, or shall refuse to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the discharge papers or land warrant of any such soldier, sailor, or marine, or commissioned officer which may have been placed in his hands for the purpose of collecting said claims, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or both, at the discretion of the court, and shall thereafter be debarred from prosecuting any such claim in any Executive Department of the Government. Act May 21, 1872, Vol. 17, p. 137.

CHAPTER VIII.

THE WAR OF THE REVOLUTION.

Section.	Section.
69. Invalid Pensions for Known Wounds.	76. Limitation as to Date of Marriage Extended.
70. Rates of Pension for Known Wounds.	77. Widow's Title Extended and Limitation as to Date of Marriage Removed.
71. Dependent Pensions to Soldiers and Sailors.	78. Certain Revolutionary Claims Barred.
72. Full Pay for Life to Certain Officers.	79. Rule of Evidence in Widows' Claims.
73. Full Pay for Life to Certain Non-commissioned Officers and Privates.	80. Anterebellion Rates to be Varied by Subsequent Laws.
74. Service Pension to Army and Navy.	81. Fourteen-Days' Service Pension to Widows.
75. Service Pension to Certain Widows, both Army and Navy.	82. Disloyalty not a Bar to Title.

Sec. 1, Act Apr.
10, 1806, Vol. 2,
p. 376.

SEC. 69. INVALID PENSIONS FOR KNOWN WOUNDS.—Any commissioned officer or noncommissioned officer, musician, soldier, marine, or seaman disabled in the actual service of the United States, while in the line of his duty, by known wounds received during the Revolutionary war, and who did not desert the service, or who in consequence of disability as aforesaid resigned his commission or took a discharge, or who after incurring disability as aforesaid was taken captive by the enemy and remained either in captivity or on parole until the close of said Revolutionary war, or who in consequence of known wounds received as aforesaid has at any period since become, and continued, disabled in such manner as to render him unable to procure a subsistence by manual labor, whether such officer, musician, soldier, marine, or seaman served as a volunteer in any proper service against the common enemy or belonged to a detachment of the militia which served against the common enemy, or to the regular forces of the United States, or of any particular State, shall, upon substantiating his claim, be placed on the pension list of the United States during life or the continuance of such disability, and be entitled to receive such sum as shall be found just and proper by the testimony adduced.

Sec. 4, Act Apr.
10, 1806, Vol. 2, p.
377.

Every pension or increase thereof by virtue of this section shall commence on the day when the claimant shall have completed his testimony before the authority proper to take the same.

Sec. 6, Act Apr.
10, 1806, Vol. 2, p.
377.

SEC. 70. RATES OF PENSION FOR KNOWN WOUNDS.—A full pension given by the preceding section to a commissioned officer shall be one-half of the monthly pay legally allowed at the time of incurring said disability to his grade in the forces raised by the United States; and the proportions less than a full pension shall be the correspondent proportions of said half pay; and a full pension to a noncommissioned officer, musician, soldier, marine, or seaman shall be five dollars a month, and the proportions less than a full pension shall be the like proportions of five dollars a month; but no pension of a commissioned officer shall be calculated at a higher rate than the half pay of a lieutenant-colonel.

Act Apr. 25,
1812, Vol. 2, p.
719.

Act May 15,
1820, Vol. 3, p.
597.

Act Feb. 4,
1822, Vol. 3, p.
650.

The provisions of this and the preceding section, so far as they authorize the admission of persons upon the pension list of the United States, shall continue in full force and effect until May twenty-fourth,

eighteen hundred and twenty-eight, and from thence for and during the term of six years and unto the end of the next session of Congress. Act May 24, 1828, Vol. 4, p. 307.

SEC. 71. DEPENDENT PENSIONS TO SOLDIERS AND SAILORS.—Every commissioned officer, noncommissioned officer, musician, and private soldier, and all officers in the hospital department and medical staff who served in the war of the Revolution until the end thereof, or for the term of nine months or longer at any period of the war, on the Continental Establishment, and every commissioned officer, noncommissioned officer, mariner, or marine who served at the same time and for a like term in the naval service of the United States, who is yet a resident citizen of the United States, and who is, or hereafter, by reason of his reduced circumstances in life, shall be, in need of assistance from his country for support, and shall have substantiated his claim to a pension, shall receive a pension from the United States; if an officer, of twenty dollars per month during life; if a noncommissioned officer, musician, mariner, marine, or private soldier, of eight dollars per month during life: *Provided*, That no person shall be entitled to the provisions of this section until he shall have relinquished his claim to every pension heretofore allowed him by the laws of the United States.

Every pension by virtue of this section shall commence on the day that the declaration under oath or affirmation shall be made: *Provided*, That all pensions allowed under this section subsequent to March first, eighteen hundred and twenty-three, shall commence from the time of completing the proof. Act Mar. 1, 1823, Vol. 3, p. 783.

SEC. 72. FULL PAY FOR LIFE TO CERTAIN OFFICERS.—Each of the surviving officers of the Army of the Revolution in the Continental line who, having continued in the service to the end of the war, was entitled to half pay by the resolve of October twenty-first, seventeen hundred and eighty, shall be authorized to receive the amount of his full pay in said line, according to his rank in the line, to begin on the third of March, eighteen hundred and twenty-six, and to continue during his natural life: *Provided*, That under this section no officer shall be entitled to receive a larger sum than the full pay of a captain in said line. Whenever any of said officers has received money of the United States as a pensioner, since the third day of March, eighteen hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would otherwise be entitled to under this section; and every pension to which said officer was entitled prior to May fifteenth, eighteen hundred and twenty-eight, shall cease from that date: *Provided further*, That from and after May thirty-first, eighteen hundred and thirty, the preceding provision shall not be construed to embrace invalid pensioners, and the pension of invalid soldiers shall not, subsequent to that date, be deducted from the amount receivable by them under this section; and no foreign officer shall be entitled to pay under this section. Sec. 1, Act May 15, 1828, Vol. 4, p. 269.

SEC. 73. FULL PAY FOR LIFE TO CERTAIN NONCOMMISSIONED OFFICERS AND PRIVATES.—Every surviving noncommissioned officer, musician, or private in said Army, who enlisted therein for and during the war, and continued in service until its termination, and thereby became entitled to receive a reward of eighty dollars under a resolve of Congress passed May fifteenth, seventeen hundred and seventy-eight, shall be entitled to receive his full monthly pay in said service, to begin on the third day of March, eighteen hundred and twenty-six, and to continue during his natural life: *Provided*, That no noncommissioned officer, musician, or private in said Army who was on the Act May 31, 1830, Vol. 4, p. 426.

pension list of the United States on May fifteenth, eighteen hundred and twenty-eight, shall be entitled to the benefits of this section:

Act July 14, 1832, Vol. 4, p. 600. *Provided further,* That from and after July fourteenth, eighteen hundred and thirty-two, the preceding provision shall not be construed

to embrace invalid pensioners, and the pension of invalid soldiers shall not be deducted from the amount receivable by them under this section.

Sec. 1, Act June 7, 1832, Vol. 4, p. 529.

SEC. 74. SERVICE PENSION TO ARMY AND NAVY.—Each of the surviving officers, noncommissioned officers, musicians, soldiers, and Indian spies who shall have served in the Continental line, or State troops, volunteers or militia, at one or more terms, a period of two years during the war of the Revolution, and who are not entitled to any benefit under the two preceding sections, is authorized to receive the amount of his full pay in the said line according to his rank, but not exceeding in any case the pay of a captain in the said line, such pay to commence from the fourth day of March, eighteen hundred and thirty-one, and shall continue during his natural life; and any such officer, noncommissioned officer, musician, or private, as aforesaid, who shall have served in the Continental line, State troops, volunteers or militia, a term or terms in the whole less than the above period, but not less than six months, shall be authorized to receive during his natural life, each according to his term of service, an amount bearing such proportion to the annuity granted to the same rank for the service of two years as his term of service did to the term aforesaid, to commence from the fourth day of March, eighteen hundred and thirty-one.

Sec. 5, Act June 7, 1832, Vol. 4, p. 530.

The officers, noncommissioned officers, mariners, or marines, who served for a like term in the naval service during the Revolutionary war shall be entitled to the benefits of this section, in the same manner as is provided for the officers and soldiers of the army of the Revolution: *Provided,* That no person receiving any annuity or pension under any law of the United States providing for Revolutionary officers and soldiers shall be entitled to the benefits of this section unless

Sec. 2, Act June 7, 1832, Vol. 4, p. 530.

he shall first relinquish his further claim to such pension; and in all payments under this section the amount which may have been received under any other law, as aforesaid, since the date at which the payments under this section shall commence shall first be deducted from such payment, but from and after February nineteenth, eighteen hundred and thirty-three, this provision shall not be construed to embrace invalid pensioners; and the pensions of invalid soldiers shall not be

Sec. 3, Act June 7, 1832, Vol. 4, p. 530.

deducted from the amount receivable by them under this section: *And provided further,* That no foreign officer shall be entitled to pay under this section.

Sec. 3, Act July 4, 1836, Vol. 5, p. 128.

SEC. 75. SERVICE PENSION TO CERTAIN WIDOWS, BOTH ARMY AND NAVY.—If any person who served in the war of the Revolution in the manner specified in the preceding section has died, leaving a widow whose marriage took place before the expiration of the last period of his service, such widow shall be entitled to receive, during the time she may remain unmarried, the annuity or pension which might have been allowed to her husband by virtue of the preceding section if

Resolution of July 7, 1838, Vol. 5, p. 311.

living on June seventh, eighteen hundred and thirty-two, and pension under this section shall not be withheld from any widow in consequence of her having married after the decease of the husband for whose services she may claim to be allowed a pension under this section: *Provided,* That she was a widow on July fourth, eighteen hundred and thirty-six: *And provided further,* That the widow of any

Sec. 2, Act Mar. 3, 1837, Vol. 5, p. 187.

person who continued in the service of the United States until the third day of November, seventeen hundred and eighty-three, and was married before that day and while her husband was in such service, shall be entitled to the benefits of this section.

SEC. 76. LIMITATION AS TO DATE OF MARRIAGE EXTENDED.—If any person who served in the war of the Revolution in the manner specified in section seventy-four of this Act has died or shall hereafter die, leaving a widow whose marriage took place before the first day of January, seventeen hundred and ninety-four, such widow shall be entitled to receive for and during her natural life, from and after the fourth day of March, eighteen hundred and forty-eight, the annuity or pension which might have been allowed to her husband in virtue of section seventy-four of this Act, if living on the seventh day of June, eighteen hundred and thirty-two: *Provided*, That in the event of the marriage of such widow such annuity or pension shall be discontinued.

SEC. 77. WIDOW'S TITLE EXTENDED AND LIMITATION AS TO DATE OF MARRIAGE REMOVED.—The widows of all officers, noncommissioned officers, musicians, soldiers, mariners, or marines, and Indian spies, who shall have served in the Continental line, State troops, volunteers, militia, or in the naval service in the Revolutionary War with Great Britain, shall be entitled to a pension during such widowhood of equal amount per annum that their husbands would have been entitled to, if living, under pension laws in force on July twenty-ninth, eighteen hundred and forty-eight, to commence on the fourth day of March, eighteen hundred and forty-eight; but no widow already receiving a pension shall be entitled to receive a further pension under the provisions of this section; and no widow married after the first day of January, eighteen hundred, shall be entitled to receive a pension under this section: *Provided*, That from and after February third, eighteen hundred and fifty-three, the widows of all officers, noncommissioned officers, musicians, and privates of the Revolutionary Army who were married subsequent to January, eighteen hundred, shall be entitled to a pension in the same manner as those who were married before that date, and this provision is also extended to the widows of the officers, noncommissioned officers, marines, or mariners who served in the Navy of the United States during the Revolutionary war.

SEC. 78. CERTAIN REVOLUTIONARY CLAIMS BARRED.—From and after the second day of April, eighteen hundred and sixty-two, no claim for a pension, or for an increase of pension, shall be allowed in favor of the children or other descendants of any person who served in the war of the Revolution, or of the widow of such person, when such person or his widow died without having established a claim to a pension.

SEC. 79. RULE OF EVIDENCE IN WIDOWS' CLAIMS.—In all cases where a pension has been granted to any officer or soldier of the Revolution in his lifetime, the evidence upon which such pension was granted shall be conclusive of the service of such officer or soldier in the application of any widow, or woman who may have been the widow, of such officer or soldier, for a pension; and upon proof by her that she was married to any such officer or soldier, and that she is a widow, she shall thereupon be placed upon the pension rolls at the same rate as such officer or soldier received during his lifetime.

SEC. 80. ANTE-REBELLION RATES TO BE VARIED BY SUBSEQUENT LAWS.—The provisions of this Act in respect to the rates of pension to

Sec. 1, Act Feb. 2, 1848, Vol. 9, p. 210.

Sec. 1, Act July 29, 1848, Vol. 9, p. 206.

Sec. 2, Act Feb. 3, 1853, Vol. 10, p. 154.

Sec. 3, Act Feb. 29, 1855, Vol. 10, p. 616.

Sec. 4742, R. S.

Sec. 4743, R. S.

Sec. 4712, R. S.

persons whose right accrued since the fourth day of March, eighteen hundred and sixty-one, are extended to pensioners whose right to pension accrued under general acts passed since the war of the Revolution and prior to the fourth day of March, eighteen hundred and sixty-one, to take effect from and after the twenty-fifth day of July, eighteen hundred and sixty-six; and the widows of Revolutionary soldiers and sailors receiving a less sum shall be paid at the rate of eight dollars per month from and after the twenty-seventh day of July, eighteen hundred and sixty-eight, and twelve dollars per month from and after the nineteenth day of March, eighteen hundred and eighty-six, subject to the provisions and limitations of section one hundred and fifty-six of this Act.

Act Mar. 19,
1886, Vol. 24, p. 5.

Sec. 6, Act Mar.
9, 1878, Vol. 20, p.
29.

Act Mar. 19,
1886, Vol. 24, p. 5.

SEC. 81. FOURTEEN-DAYS'-SERVICE PENSION TO WIDOWS.—Any widow of a Revolutionary soldier who served fourteen days, or was in any engagement, shall be placed upon the pension rolls of the United States, and receive a pension at the rate of eight dollars per month from the ninth day of March, eighteen hundred and seventy-eight. And this rate shall be subject to increase to twelve dollars per month from March nineteenth, eighteen hundred and eighty-six, under the provisions and limitations of section one hundred and fifty-six of this Act.

Sec. 4716, R. S.

Sec. 5, Act Mar.
9, 1878, Vol. 20, p.
28.

SEC. 82. DISLOYALTY NOT A BAR TO TITLE.—Section one hundred and forty-two of this Act, providing that no money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in or aided or abetted the late rebellion against the authority of the United States, shall not apply to persons provided for by the preceding section.

CHAPTER IX.

THE WAR OF EIGHTEEN HUNDRED AND TWELVE.

Section.

83. Invalid Pensions to Soldiers of War of 1812.
84. Invalid Pensions to Militia in War of 1812.
85. Invalid Pensions to Cherokee Indians in War of 1812.
86. Widows' and Minor Children's Pensions, War of 1812.
87. Sixty-Days'-Service Pension to Soldiers and Sailors.

Section.

88. Rates of Service Pensions.
89. Sixty-Days'-Service Pension to Widows.
90. Regulations to be Prescribed by Secretary of the Interior.
91. Loss of Discharge Certificate.
92. Fourteen-Days'-Service Pension, War of 1812.
93. Restoring Pensioners Dropped for Disloyalty.

Sec. 14, Act Jan.
11, 1812, Vol 2, p.
673.

Sec. 5, Act Feb.
6, 1812, Vol. 2, p.
677.

Sec. 2, Act Aug.
2, 1813, Vol. 3, p.
74.

SEC. 83. INVALID PENSIONS TO SOLDIERS OF WAR OF EIGHTEEN HUNDRED AND TWELVE.—If any officer, noncommissioned officer, musician, or private shall be disabled by wounds or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pension and under such regulations as are or may be directed by law: *Provided always*, That the compensation to be allowed for such wounds or disabilities to a commissioned officer shall not exceed for the highest rate of disability half the monthly pay of such officer at the time of his being disabled or wounded, and that no officer shall receive more than the half pay of a lieutenant-colonel; and that the rate of compensation to noncommissioned officers, musicians, and privates shall not exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

SEC. 84. INVALID PENSIONS TO MILITIA IN WAR OF EIGHTEEN HUNDRED AND TWELVE.—The officers and private soldiers of the militia who have been disabled by wounds or otherwise while in the service of the United States in the discharge of their duty during the war of eighteen hundred and twelve shall be placed on the list of pensioners in the same manner as the officers and soldiers of the Regular Army.

Sec. 1, Act Apr. 16, 1816, Vol. 3, p. 286.

Sec. 2, Act Aug. 2, 1813, Vol. 3, p. 74.

SEC. 85. INVALID PENSIONS TO CHEROKEE INDIANS IN WAR OF EIGHTEEN HUNDRED AND TWELVE.—Such warriors of the Cherokee Nation as were engaged on the side of the United States in the war of eighteen hundred and twelve with Great Britain and the Southern Indians, and who were wounded in such service, shall be placed upon the pension roll at the same rates of pension as are allowed by law to the officers and soldiers of the Regular Army of the United States, which pension shall commence from the period of disability, if allowed prior to the sixth day of June, eighteen hundred and sixty-six; otherwise from the date of filing the last paper requisite to establish the same, as provided by section one hundred and seventy-three of this Act.

Act Apr. 14, 1842, Vol. 5, p. 473.

Sec. 4713, R. S.

SEC. 86. WIDOWS' AND MINOR CHILDREN'S PENSIONS, WAR OF EIGHTEEN HUNDRED AND TWELVE.—The widows and children under sixteen years of age of the officers, noncommissioned officers, musicians, and privates of the regulars, militia, and volunteers of the war of eighteen hundred and twelve who remained at the date of their death in the military service of the United States, or who received an honorable discharge and have died or shall hereafter die of injury received or disease contracted in the service and in the line of duty, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half pay of a lieutenant-colonel, and such half-pay pension shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section eighty of this Act.

Sec. 4732, R. S.

SEC. 87. SIXTY-DAYS'-SERVICE PENSION TO SOLDIERS AND SAILORS.—The Secretary of the Interior is directed to place on the pension roll the names of the surviving officers and enlisted and drafted men, including militia and volunteers, of the military and naval service of the United States who served sixty days in the war with Great Britain of eighteen hundred and twelve, and were honorably discharged, and such other officers and soldiers as may have been personally named in any resolution of Congress for any specific service in that war, although their term of service may have been less than sixty days, subject, however, to the provisions of section one hundred and forty-two of this Act.

Sec. 4736, R. S.

SEC. 88. RATES OF SERVICE PENSIONS.—Pensions under the preceding section shall be at the rate of eight dollars per month, and shall be paid to the persons entitled thereto for the term of their lives from and after the fourteenth day of February, eighteen hundred and seventy-one. But that section shall not apply to any person who is receiving a pension at the rate of eight dollars or more per month; nor to any person who is receiving a pension less than eight dollars per month, except for the difference between the pension now received and eight dollars per month.

Sec. 4737, R. S.

SEC. 89. SIXTY-DAYS'-SERVICE PENSION TO WIDOWS.—The surviving widows of such persons as are embraced within the provisions of

Sec. 4738, R. S.

the two preceding sections shall be allowed, on the conditions and limitations therein expressed, the same pension that such persons themselves would have been entitled to receive thereunder if living on the fourteenth day of February, eighteen hundred and seventy-one: *Provided, however,* That such widows were married to the husbands, on account of whose services the pension is claimed, prior to the treaty of peace which terminated the war of eighteen hundred and twelve, and have not remarried. And the rate allowed under this section shall be subject to increase to twelve dollars per month from March nineteenth, eighteen hundred and eighty-six, under the provisions and limitations of section one hundred and fifty-six of this Act.

Sec. 1, Act
Mar. 19, 1886,
Vol. 24, p. 5.

Sec. 4739, R. S. SEC. 90. REGULATIONS TO BE PRESCRIBED BY SECRETARY OF THE INTERIOR.—Before the name of any person is placed upon the pension roll under the three preceding sections proof shall be made, under such regulations as the Secretary of the Interior may prescribe, that the applicant is entitled to a pension under the provisions of the sections herein cited; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it appears, by proof satisfactory, that such name was put upon such roll through false or fraudulent representations.

Sec. 4740, R. S. SEC. 91. LOSS OF DISCHARGE CERTIFICATE.—The loss of a certificate of discharge shall not deprive an applicant of the benefits of sections eighty-seven, eighty-eight, and eighty-nine of this Act, but other proof of services performed and of an honorable discharge, if deemed satisfactory, shall be sufficient.

Secs. 1, 2, 3, and
4, Act Mar. 9,
1878, Vol. 20, p.
27.

SEC. 92. FOURTEEN-DAYS'-SERVICE PENSION, WAR OF EIGHTEEN HUNDRED AND TWELVE.—(a) The Secretary of the Interior is hereby authorized and directed to place on the pension rolls the names of the surviving officers and enlisted and drafted men, without regard to color, including militia and volunteers, of the military and naval service of the United States who served for fourteen days in the war with Great Britain of eighteen hundred and twelve, or who were in any engagement and were honorably discharged, and the surviving widows of such officers and enlisted and drafted men. This section shall not apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension now received (if less than eight dollars per month) and eight dollars per month. Pensions under this section shall be at the rate of eight dollars per month, except as herein provided, and shall be paid to the persons entitled thereto, from and after March ninth, eighteen hundred and seventy-eight, for and during their natural lives: *Provided,* That the pensions to widows provided for in this section shall cease when they shall marry again:

Act Mar. 19,
1886, Vol. 24, p.
5.

And provided further, That the pension to widows under this section shall be at the rate of twelve dollars per month from and after March nineteenth, eighteen hundred and eighty-six, subject to the limitations and provisions of section one hundred and fifty-six of this Act.

(b) Before the name of any person shall be placed upon the pension rolls under this section proof shall be made, under such rules and regulations as the Commissioner of Pensions, with the approval of the Secretary of the Interior, shall prescribe, that the applicant is entitled to a pension under this section; and any person who shall falsely take any oath required to be taken under the provisions of this section shall be guilty of perjury, and the Secretary of the Interior shall

cause to be stricken from the rolls the name of any person when it shall appear, by proof satisfactory to him, that such name was put on said rolls by or through false or fraudulent representations, or by mistake as to the right of such person to a pension under this section. The loss or lack of a certificate of discharge shall not deprive the applicant of the benefit of this section, but other proof of the service performed and of an honorable discharge, if satisfactory, shall be deemed sufficient; and when there is no record evidence of such service and such discharge, the applicant may establish the same by other satisfactory testimony: *Provided*, That when any person has been granted a land warrant, under any Act of Congress, for and on account of service in the said war of eighteen hundred and twelve, such grant shall be prima facie evidence of his service and honorable discharge, so as to entitle him, if living, or his widow if he be dead, to a pension under this section; but such evidence shall not be conclusive, and may be rebutted by evidence that such land warrant was improperly granted.

(c) All applications for pensions of the classes provided for in this section heretofore, or which may hereafter be made, shall be considered and decided as though made under this section; and all laws now in force in regard to the manner of paying pensions, and in reference to the punishment of frauds, shall be applicable to all claims under the provisions of this section.

SEC. 93. RESTORING PENSIONERS DROPPED FOR DISLOYALTY.—The Secretary of the Interior is hereby authorized and directed to restore to the pension rolls the names of all persons surviving on the ninth day of March, eighteen hundred and seventy-eight, and who prior to that date had been pensioned on account of service in the war of eighteen hundred and twelve against Great Britain, and whose names were stricken from the rolls in pursuance of the Act entitled "An Act authorizing the Secretary of the Interior to strike from the pension rolls the names of such persons as have taken up arms against the Government, or who have in any manner encouraged the rebels," approved February fourth, eighteen hundred and sixty-two; and the joint resolution entitled "Joint resolution prohibiting payment by any officer of the Government to any person not known to have been opposed to the rebellion and in favor of its suppression," approved March second, eighteen hundred and sixty-seven, and section forty-seven hundred and sixteen of the Revised Statutes of the United States and section one hundred and forty-two of this Act shall not apply to the persons provided for by this and the preceding section: *Provided*, That no money shall be paid to anyone on account of pensions for the time during which his name remained stricken from the rolls.

Secs. 5 and 6,
Act Mar. 9, 1878,
Vol. 20, pp. 28, 29.

The surviving widow of any pensioner of the war of eighteen hundred and twelve, where the name of said pensioner was stricken from the pension rolls in pursuance of an Act entitled "An Act authorizing the Secretary of the Interior to strike from the pension rolls the names of such persons as have taken up arms against the Government, or who have in any manner encouraged the rebels," approved February fourth, eighteen hundred and sixty-two, and where, under the existing provisions of law, said pensioner died without his name being restored to the rolls, shall be entitled to make claim for a pension as such widow after the ninth day of March, eighteen hundred and seventy-eight: *Provided*, That no such arrearages shall be paid for any period prior to the time of the removal of the disability of the pensioner, as provided

Sec. 7, Act Mar. 9, 1878, Vol. 20, p. 29. in this section. All laws and clauses of laws in conflict with this and the preceding section are hereby repealed.

CHAPTER X.

INDIAN WARS PRIOR TO MARCH FOURTH, EIGHTEEN HUNDRED AND SIXTY-ONE.

Section.	Section.
94. Invalid Pensions to Soldiers in Indian Wars.	100. Continuation of Five Years Half-pay.
95. Pension for Known Wounds; Campaign on the Wabash.	101. Rates Allowed as Half-pay.
96. Invalid Pensions for Black Hawk War.	102. Widows' and Children's Pensions for Various Indian Wars.
97. Invalid Pensions for Creek War, etc.	103. Restoration of Pensioners Dropped for Disloyalty.
98. Invalid Pensions for Florida Indian Wars.	104. Service Pension for Certain Indian Wars.
99. Widows' and Minors' Five Years Half-pay.	

Sec. 4, Act Jan. 2, 1812, Vol. 2, p. 670. SEC. 94. INVALID PENSIONS TO SOLDIERS IN INDIAN WARS.—The officers, noncommissioned officers, and privates, raised pursuant to the Act of Congress approved January second, eighteen hundred and twelve, in view of actual or threatened invasions of any State or Territory by any Indian tribe or tribes, shall be entitled to the like compensation in case of disability by wounds or otherwise, incurred in the service, as officers, noncommissioned officers, and privates in the Regular Army.

Sec. 3, Act Apr. 10, 1812, Vol. 2, p. 705. SEC. 95. PENSION FOR KNOWN WOUNDS; CAMPAIGN ON THE WABASH.—Every officer according to the rank assigned him by Governor Harrison which he held on the seventh day of November, eighteen hundred and eleven, noncommissioned officer and private of the volunteers and militia, who served in the campaign on the Wabash against the hostile Indians, and who has been disabled by known wounds received in said service, shall be placed on the list of invalids of the United States at such rate of pension as shall be directed by the President of the United States: *Provided*, That the rate of compensation for such wounds and disabilities shall never for the highest disability exceed half the monthly pay of such officer, and that the rate of compensation to a noncommissioned officer or private shall never exceed five dollars per month, and all inferior disabilities shall entitle the person so disabled to receive a sum in proportion to the highest disability; but no pension of a commissioned officer shall be calculated at a higher rate than the half pay of a lieutenant-colonel. But all rates allowed under this section shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section eighty of this Act.

Sec. 4, Act June 15, 1832, Vol. 4, p. 533. SEC. 96. INVALID PENSIONS FOR BLACK HAWK WAR.—The officers, noncommissioned officers, and privates raised for the protection and defense of the northwestern frontier of the United States shall be entitled to the like compensation, in case of disability by wounds or otherwise incurred in the service, as is allowed by sections one hundred and nine and one hundred and ten of this Act, to officers, noncommissioned officers, and privates in the military establishment of the United States.

Sec. 5, Act May 23, 1836, Vol. 5, p. 33. SEC. 97. INVALID PENSIONS FOR CREEK WAR, AND SO FORTH.—The volunteers who may have been received into the service of the United States by virtue of the provisions of an Act of Congress approved May

twenty-third, eighteen hundred and thirty-six, for the purpose of quelling disturbances and repelling invasions by hostile Indians, shall be entitled to all the benefits which may be conferred on persons wounded in the service of the United States.

SEC. 98. INVALID PENSIONS FOR FLORIDA INDIAN WARS.—The volunteers or militia who have been received into the service of the United States to suppress Indian depredations in Florida shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

Sec. 1657, R. S.

SEC. 99. WIDOWS' AND MINORS' FIVE YEARS' HALF PAY.—When any officer, noncommissioned officer, artificer, or private of the militia or volunteer corps dies in the service of the United States, or in returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and leaves a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half pay for the remainder of the time shall go to the child or children of the decedent. And the Secretary of the Interior shall adopt such forms of evidence in applications under this section as the President may prescribe.

Sec. 1656, R. S.

SEC. 100. CONTINUATION OF FIVE YEARS' HALF PAY.—All those surviving widows and minor children who have been allowed five years' half pay under the provisions of any general laws passed prior to the third day of June, eighteen hundred and fifty-eight, are granted a continuance of such half pay, to commence from the date of the last payment under the respective Acts of Congress granting the same. And such half pay is granted to such widows during life, and, where there is no widow, to the children while under the age of sixteen years; but in case of remarriage or death of any such widow, the half pay shall go to the children of the decedent on account of whose service it is claimed while such children are under sixteen years of age and no longer.

Sec. 4725, R. S.

SEC. 101. RATES ALLOWED AS HALF PAY.—The half pay of such widows and children shall be half the monthly pay of the officers, noncommissioned officers, musicians, and privates of the infantry of the Regular Army, and no more, and no greater sum shall be allowed to any such widow or minor children than the half pay of a lieutenant-colonel. But the preceding section shall not be construed to apply to or embrace the case of any person receiving a pension for life on the third day of June, eighteen hundred and fifty-eight; and wherever half pay has been granted by any special act of Congress, and renewed or continued under the provisions of that section, the same shall continue from the date above named: *Provided*, That pensions under this and the preceding section shall be varied in accordance with the provisions of section eighty of this Act.

Sec. 4726, R. S.

Sec. 4727, R. S.

SEC. 102. WIDOWS' AND CHILDREN'S PENSIONS FOR VARIOUS INDIAN WARS.—The widows, and children under sixteen years of age, of the officers, noncommissioned officers, musicians, and privates of the regulars, militia, and volunteers of the various Indian wars since seventeen hundred and ninety, who remained at the date of their death in the military service of the United States, or who received an honorable discharge and have died, or shall hereafter die of injury received or

Sec. 4732, R. S.

disease contracted in the service and in the line of duty, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half pay of a lieutenant-colonel, and such half-pay pension shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section eighty of this Act.

Sec. 5, Act Mar.
9, 1878, Vol. 20, p.
28.

SEC. 103. RESTORATION OF PENSIONERS DROPPED FOR DISLOYALTY.—

The Secretary of the Interior is hereby authorized and directed to restore to the pension rolls the names of all persons now surviving heretofore pensioned for service in any of the Indian wars, and whose names were stricken from the rolls in pursuance of the Act entitled "An Act authorizing the Secretary of the Interior to strike from the pension rolls the names of such persons as have taken up arms against the Government or who have in any manner encouraged the rebels," approved February fourth, eighteen hundred and sixty-two; and the joint resolution entitled "Joint resolution prohibiting payment by any officer of the Government to any person not known to have been opposed to the rebellion and in favor of its suppression," approved March second, eighteen hundred and sixty-seven; and section forty-seven hundred and sixteen of the Revised Statutes of the United States and section one hundred and forty-two of this Act shall not apply to the persons provided for by this section: *Provided*, That no money shall be paid to anyone on account of pensions for the time during which his name remained stricken from the rolls.

Act July 27,
1892, Vol. 27, p.
281.

SEC. 104. SERVICE PENSION FOR CERTAIN INDIAN WARS.—(a)

The Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers, of the military and naval service of the United States, who served for thirty days in the Black Hawk war, the Creek war, the Cherokee disturbances, or the Florida war with the Seminole Indians, embracing a period from eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, and were honorably discharged, and such other officers, soldiers, and sailors as may have been personally named in any resolution of Congress for any specific service in said Indian wars, although their term of service may have been less than thirty days, and the surviving widows of such officers and enlisted men: *Provided*, That such widows have not remarried: *Provided further*, That this section shall not apply to any person not a citizen of the United States.

Act Feb. 3,
1893, Vol. 27, p.
429.

But the Commissioner of Pensions is hereby authorized and directed to accept as sufficient proof of the citizenship of an applicant for pension under this section the fact that such applicant at the date of the application was an actual and bona fide resident of the United States.

(b) Pensions under this section shall be at the rate of eight dollars per month, and payable from and after July twenty-seventh, eighteen hundred and ninety-two, for and during the natural lives of the persons entitled thereto.

(c) Before the name of any person shall be placed on the pension roll under this section proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this section shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it shall be

made to appear, by proof satisfactory to him, that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this section. The loss of the certificate of discharge shall not deprive any person of the benefits of this section, but other evidence of service performed and of an honorable discharge may be deemed sufficient.

(d) This section shall not apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension now received (if less than eight dollars per month) and eight dollars per month.

(e) The pension laws now in force, which are not inconsistent or in conflict with this section, are hereby made a part of this section, so far as they may be applicable thereto.

(f) Section forty-seven hundred and sixteen of the Revised Statutes is hereby repealed, so far as the same relates to this section or to pensioners under this section, and the provisions of section one hundred and forty-two of this Act shall not apply to pensioners under this section.

CHAPTER XI.

THE WAR WITH MEXICO.

Section.	Section.
105. Invalid Pensions for War with Mexico.	108. Powell's Battalion, Missouri Mounted Volunteers.
106. Pension to Widows and Children, War with Mexico.	108½. Gray's Battalion of Arkansas Volunteers.
107. Service Pension for War with Mexico.	

SEC. 105. INVALID PENSIONS FOR WAR WITH MEXICO.—Any officer, noncommissioned officer, musician, or private, whether of the Regular Army or volunteers, disabled by reason of injury received or disease contracted while in the line of duty in actual service in the war with Mexico, or in going to or returning from the same, who received an honorable discharge, shall be entitled to a pension proportionate to his disability, not exceeding for total disability half the pay of his rank at the date at which he received the wound or contracted the disease which resulted in such disability. But no pension shall exceed half the pay of a lieutenant-colonel.

Sec. 4730, R. S.

SEC. 106. PENSION TO WIDOWS AND CHILDREN, WAR WITH MEXICO.—If any officer or other person referred to in the preceding section has died, or shall hereafter die, by reason of any injury received or disease contracted under the circumstances therein set forth, his widow shall be entitled to receive the same pension as the husband would have been entitled to had he been totally disabled; and in case of her death or remarriage the child or children of such officer or other person referred to in the preceding section, while under the age of sixteen years, shall be entitled to receive the pension. But the rate of pension prescribed by this and the preceding section shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section eighty of this Act; and the commencement of pension under this and the preceding section shall be governed by the provisions of section one hundred and seventy-three of this Act.

Sec. 4731, R. S.

Act Jan. 29,
1887, Vol. 24, p.
371.

SEC. 107. SERVICE PENSION FOR WAR WITH MEXICO.—(a) The Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers, of the military and naval services of the United States who, being duly enlisted, actually served sixty days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or en route thereto, in the war with that nation, or were actually engaged in a battle in said war, and were honorably discharged, and to such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said war, and the surviving widow of such officers and enlisted men: *Provided*, That such widows have not remarried: *Provided further*, That every such officer, enlisted man, or widow who is or may become sixty-two years of age, or who is or may become subject to any disability or dependency equivalent to some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension, shall be entitled to the benefits of this section; but it shall not be held to include any person not within the rule of age or disability or dependence herein defined, or who incurred such disability while in any manner voluntarily engaged in or aiding or abetting the late rebellion against the authority of the United States.

(b) Pensions under this section shall be at the rate of eight dollars per month, and payable only from and after January twenty-ninth, eighteen hundred and eighty-seven, for and during the natural lives of the persons entitled thereto, or during the continuance of the disability for which the same shall be granted: *Provided*, That this section shall not apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension so received (if less than eight dollars per month) and eight dollars per month: *Provided*, That the Secretary of the Interior is authorized to increase the pension of every pensioner on the rolls at eight dollars per month on January fifth, eighteen hundred and ninety-three, on account of services in the Mexican war, and who is wholly disabled for manual labor, and is in such destitute circumstances that eight dollars per month are insufficient to provide him the necessaries of life, to twelve dollars per month.

Act Jan. 5,
1893, Vol. 27, p.
413.

(c) Before the name of any person shall be placed on the pension roll under this section proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this section shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this section. The loss of the certificate of discharge shall not deprive any person of the benefits of this section, but other record evidence of enlistment and service and of an honorable discharge may be deemed sufficient: *Provided*, That when any person has been granted a land warrant, under any Act of Congress, for and on account of service in the said war with Mexico, such grant shall be *prima facie* evidence of his service and honorable discharge; but such evidence shall not be conclusive, and may be rebutted by evidence that such land warrant was improperly granted

(d) The pension laws now in force which are not inconsistent or in conflict with this section are hereby made a part of this section, so far as they may be applicable thereto.

(e) Section forty-seven hundred and sixteen of the Revised Statutes is hereby repealed, so far as the same relates to this section or to pensioners under this section, and section one hundred and forty-two of this Act shall not apply to pensioners under this section.

(f) The provisions of this section shall not apply to any person while under the political disabilities imposed by the fourteenth amendment to the Constitution of the United States.

SEC. 108. POWELL'S BATTALION, MISSOURI MOUNTED VOLUNTEERS.—The Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of all of the honorably discharged surviving officers and enlisted men of Powell's Battalion of Missouri Mounted Volunteers, raised under the Act of Congress of May thirteenth, eighteen hundred and forty-six, for service during the war with Mexico; and the names of the surviving widows of such officers and enlisted men, subject to the limitations and regulations of the pension laws of the United States for pensioning the survivors of the war with Mexico. Act Mar. 3, 1891,
Vol. 23, p. 1418.

SEC. 108½. GRAY'S BATTALION OF ARKANSAS VOLUNTEERS.—The Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of all of the honorably discharged surviving officers and enlisted men of Gray's Battalion of Arkansas Volunteers, raised under the Act of Congress of May thirteenth, eighteen hundred and forty-six, for service during the war with Mexico; and the names of surviving widows of such officers and enlisted men, subject to the limitations and regulations of the pension laws of the United States for pensioning the survivors of the war with Mexico. Act Feb. 5,
1897, Vol. 29, p.
99.

(Received by President February fifth, eighteen hundred and ninety-seven, and became a law without his approval.)

CHAPTER XII.

THE REGULAR ARMY AND MILITIA PRIOR TO MARCH FOURTH, EIGHTEEN HUNDRED AND SIXTY-ONE.

Section.

109. Invalid Pensions to Soldiers of the Military Peace Establishment.

110. Rates Provided for Various Ranks.

111. Invalid Pensions to Soldiers of the Militia.

Section.

112. Half pay to Widows and Children of Officers.

113. Half pay to Widows and Children of Soldiers of the Militia.

SEC. 109. INVALID PENSIONS TO SOLDIERS OF THE MILITARY PEACE ESTABLISHMENT.—If any officer, noncommissioned officer, musician, or private in the corps composing the peace establishment shall be disabled, by wounds or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pay and under such regulations as may be directed by the President of the United States for the time being: *Provided, always,* That the compensation to be allowed for such wounds or disabilities, to a commissioned officer shall not exceed, for the highest rate of disability, half the monthly pay of such officer at the time of his being disabled or wounded; and that no officer shall receive more than the half-pay of a lieutenant-colonel; and that the rate of compensation to noncommissioned officers, musicians, and privates Act Mar. 16,
1892, sec. 14, Vol.
2, p. 135.

shall not exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

Sec. 1, Act Apr.
24, 1816, Vol. 3,
p. 296.

SEC. 110. RATES PROVIDED FOR VARIOUS RANKS.—All persons of the ranks hereinafter named who may have been on the military pension roll of the United States on the twenty-fourth day of April, eighteen hundred and sixteen, shall from and after that date be entitled to and receive for disabilities of the highest degree the following sums in lieu of those to which they were then entitled, to wit: a first lieutenant, seventeen dollars; a second lieutenant, fifteen dollars; a third lieutenant, fourteen dollars; an ensign, thirteen dollars; and a noncommissioned officer, musician, or private, eight dollars per month; and for disabilities of a degree less than the highest, a sum proportionably less.

Sec. 1639, R. S.
Sec. 3, Act Apr.
24, 1816, Vol. 3,
p. 297.

SEC. 111. INVALID PENSIONS TO SOLDIERS OF THE MILITIA.—All laws and regulations relating to the admission of the officers and soldiers of the Regular Army to be placed on the pension roll of the United States shall, and they are hereby declared to, relate equally to the officers and soldiers of the militia whilst in the service of the United States.

Sec. 15, Act
Mar. 16, 1802,
Vol. 2, p. 135.
Sec. 1, Act
Aug. 2, 1813,
Vol. 3, p. 73.

SEC. 112. HALF PAY TO WIDOWS AND CHILDREN OF OFFICERS.—If any commissioned officer in the military peace establishment of the United States, or of the militia, or of any volunteer corps, shall, while in the service of the United States, die by reason of any wound received in actual service of the United States, and leave a widow or, if no widow, a child or children under sixteen years of age, such widow or, if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death for and during the term of five years. But in the case of the death or intermarriage of such widow before the expiration of the said term of five years, the half pay for the remainder of the time shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the decease of such child or children.

Sec. 1, Act
July 4, 1836,
Vol. 5, p. 127.

SEC. 113. HALF PAY TO WIDOWS AND CHILDREN OF SOLDIERS OF THE MILITIA.—When any officer, noncommissioned officer, musician, or private of the militia, including rangers, sea fencibles and volunteers, shall have died while in the service of the United States, since the twentieth of April, eighteen hundred and eighteen, or who shall have died in consequence of a wound received whilst in the service since the day aforesaid, and shall have left a widow or, if no widow, a child or children under sixteen years of age, such widow or, if no widow, such child or children shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, or receiving such wound, for and during the term of five years, and in case of the death or marriage of such widow before the expiration of said five years, the half pay for the remainder of the time shall go to the said child or children: *Provided*, That the half pay aforesaid shall be half the monthly pay of the officers, noncommissioned officers, musicians, and privates of the infantry of the Regular Army and no more: *Provided also*, That no greater sum shall be allowed to the widow or to the child or children of any officer than the half pay of a lieutenant-colonel; and the half pay provided by this and the preceding section shall be continued to the beneficiaries subject to the provisions of sections one hundred, and one hundred and one

Sec. 4725, R. S.
Sec. 4726, R. S.
Sec. 4727, R. S.

of this Act, and the rates and commencement of pension provided for in this and the four preceding sections shall be subject to the provisions of sections eighty and one hundred and seventy-three of this Act.

Sec. 4712, R. S.
Sec. 4713, R. S.

CHAPTER XIII.

GENERAL PROVISIONS RELATING EXCLUSIVELY TO THE NAVY.

Section.	Section.
114. Navy Invalid Pensions Prior to March 4, 1861.	123. Half-pay Pensions for Twenty Years' Service in Navy.
115. Navy Widows' Pensions Prior to March 4, 1861.	124. Pension for Ten Years' Service in Navy.
116. Revenue Cutters Cooperating with the Navy.	125. Privateer Pension Fund.
117. The Navy Pension Fund.	126. Source of Privateer Pension Fund.
118. Disposition of Certain Penalties and Forfeitures.	127. Privateer Pension Fund to be Paid to the Treasury.
119. Prize Money to Constitute a Navy Pension Fund.	128. Pensions to Certain Privateersmen.
120. Navy Pension Fund to be Invested in United States Securities.	129. Record of Disabled Privateersmen.
121. Rate of Interest on Navy Pension Fund.	130. Transcript of Journals as to Disabled Privateersmen.
122. Navy Pensions Payable from Navy Pension Fund.	131. Navy Pensions, Already Allowed, not to be Reduced.

SEC. 114. NAVY INVALID PENSIONS PRIOR TO MARCH FOURTH, EIGHTEEN HUNDRED AND SIXTY-ONE.—If any officer, warrant or petty officer, seaman, engineer, first, second, or third assistant engineer, fireman, or coal-heaver of the Navy, or any marine, has been disabled prior to the fourth day of March, eighteen hundred and sixty-one, by reason of any injury received or disease contracted in the service and line of duty, he shall be entitled to receive, during the continuance of his disability, a pension proportionate to the degree of his disability, not exceeding half the monthly pay of his rank as it existed in January, eighteen hundred and thirty-five. But the pension of a chief engineer shall be the same as that of a lieutenant of the Navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; but an engineer, fireman, or coal-heaver shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first day of August, eighteen hundred and forty-two.

Sec. 4728, R. S.

SEC. 115. NAVY WIDOWS' PENSIONS PRIOR TO MARCH FOURTH, EIGHTEEN HUNDRED AND SIXTY-ONE.—If any person referred to in the preceding section has died in the service of injury received or disease contracted under the conditions therein stated, his widow shall be entitled to receive half the monthly pay to which the deceased was entitled at the date of his death; and in case of her death or marriage, the child or children under sixteen years of age shall be entitled to the pension. But the rate of pension herein allowed shall be governed by the pay of the Navy as it existed in January, eighteen hundred and thirty-five; and the pension of the widow of a chief engineer shall be the same as that of the widow of a lieutenant in the Navy; the pension of the widow of a first assistant engineer shall be the same as that of the widow of a lieutenant of marines; the pension of the widow of a second or third assistant engineer the same as that of the widow of

Sec. 4729, R. S.

a forward officer; the pension of the widow of a fireman or coal-heaver shall be the same as that of the widow of a seaman. But the rate of pension prescribed by this and the preceding section shall be varied from and after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section eighty of this Act; and the widow of an engineer, fireman, or coal-heaver shall not be entitled to any pension by reason of the death of her husband, if his death was prior to the thirty-first day of August, eighteen hundred and forty-two.

Sec. 4741, R. S. SEC. 116. REVENUE CUTTERS COOPERATING WITH THE NAVY.—The officers and seamen of the revenue cutters of the United States, who have been or may be wounded or disabled in the discharge of their duty while cooperating with the Navy by order of the President, shall be entitled to be placed on the Navy pension list, at the same rate of pension and under the same regulations and restrictions as are provided by law for the officers and seamen of the Navy.

Sec. 4750, R. S. SEC. 117. THE NAVY PENSION FUND.—The Secretary of the Navy shall be trustee of the Navy pension fund.

Sec. 4751, R. S. SEC. 118. DISPOSITION OF CERTAIN PENALTIES AND FORFEITURES.—All penalties and forfeitures incurred under the provisions of sections twenty-four hundred and sixty-one, twenty-four hundred and sixty-two, twenty-four hundred and sixty-three, of the Revised Statutes, title "The Public Lands," shall be sued for, recovered, distributed, and accounted for under the directions of the Secretary of the Navy, and shall be paid over, one-half to the informers, if any, or captors, where seized, and the other half to the Secretary of the Navy for the use of the Navy pension fund; and the Secretary is authorized to mitigate, in whole or in part, on such terms and conditions as he deems proper, by an order in writing, any fine, penalty, or forfeiture so incurred.

Sec. 4752, R. S. SEC. 119. PRIZE MONEY TO CONSTITUTE A NAVY PENSION FUND.—All money accruing or which has already accrued to the United States from sale of prizes shall be and remain forever a fund for the payment of pensions to the officers, seamen, and marines who may be entitled to receive the same; if such fund be insufficient for the purpose, the public faith is pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines.

Sec. 4753, R. S. SEC. 120. NAVY PENSION FUND TO BE INVESTED IN UNITED STATES SECURITIES.—The Secretary of the Navy, as trustee of the naval pension fund, is directed to cause to be invested in the registered securities of the United States, on the first day of January and the first day of July of each year, so much of such fund then in the Treasury of the United States as may not be required for the payment of naval pensions for the then current fiscal year; and, upon the requisition of the Secretary, so much of the fund as may not be required for such payment of pensions accruing during the current fiscal year shall be held in the Treasury on the days above named in each year, subject to his order, for the purpose of such immediate investment; and the interest payable in coin upon the securities in which the fund may be invested shall be so paid, when due, to the order of the Secretary of the Navy, and he is authorized and directed to exchange the amount of such interest, when paid in coin, for so much of the legal currency of the United States as may be obtained therefor at the current

rates of premium on gold, and to deposit the interest so converted in the Treasury to the credit of the naval pension fund; but nothing herein contained shall be construed to interfere with the payment of naval pensions under the supervision of the Secretary of the Interior as regulated by law.

SEC. 121. RATE OF INTEREST ON NAVY PENSION FUND.—The interest on the naval pension fund shall hereafter be at the rate of three per centum per annum in lawful money. Sec. 4754, R. S.

SEC. 122. NAVY PENSIONS PAYABLE FROM NAVY PENSION FUND.—The Navy pensions shall be paid from the Navy pension fund, but no payments shall be made therefrom except upon appropriations authorized by Congress. Sec. 4755, R. S.

SEC. 123. HALF-PAY PENSION FOR TWENTY YEARS' SERVICE IN NAVY.—There shall be paid out of the naval pension fund to every person who, from age or infirmity, is disabled from sea service, but who has served as an enlisted person, or an appointed petty officer, or both, in the Navy or Marine Corps for the period of twenty years, and not been discharged for misconduct, in lieu of being provided with a home in the Naval Asylum, Philadelphia, if he so elects, a sum equal to one-half the pay of his rating at the time he was discharged, to be paid to him quarterly, under the direction of the Commissioner of Pensions; and application for such pension shall be made to the Secretary of the Navy, who, upon being satisfied that the applicant comes within the provisions of this section, shall certify the same to the Commissioner of Pensions, and such certificate shall be his warrant for making payment as herein authorized. Sec. 4756, R. S.,
as amended by
act Dec. 23, 1886,
Vol. 24, p. 353.

SEC. 124. PENSION FOR TEN YEARS' SERVICE IN NAVY.—Every disabled person who has served in the Navy or Marine Corps as an enlisted man or appointed petty officer, or both, for a period not less than ten years, and not been discharged for misconduct, may apply to the Secretary of the Navy for aid from the surplus income of the naval pension fund; and the Secretary of the Navy is authorized to convene a board of not less than three naval officers, one of whom shall be a surgeon, to examine into the condition of the applicant, and to recommend a suitable amount for his relief and for a specified time, and upon the approval of such recommendation by the Secretary of the Navy, and a certificate thereof to the Commissioner of Pensions, the amount shall be paid in the same manner as is provided in the preceding section for the payment to persons disabled by long service in the Navy; but no allowance so made shall exceed the rate of a pension for full disability corresponding to the grade of the applicant, nor, if in addition to a pension, exceed one-fourth the rate of such pension. Sec. 4757, R. S.,
as amended by
act Dec. 23, 1886,
Vol. 24, p. 353.

SEC. 125. PRIVATEER PENSION FUND.—The Secretary of the Navy shall be trustee of the privateer pension fund. Sec. 4758, R. S.

SEC. 126. SOURCE OF PRIVATEER PENSION FUND.—Two per centum on the net amount, after deducting all charges and expenditures, of the prize money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector or other chief officer of the customs of the port or place in the United States at which such captured or recaptured vessels may arrive; or to the consul or other public agent of the United States residing at the port or place, not within the United States, at which such captured or recaptured vessels may arrive. And Sec. 4759, R. S.

the moneys arising therefrom are pledged by the Government of the United States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled on board of the private armed vessels of the United States, in any engagement with the enemy, to be assigned and distributed in such manner as is or may be provided by law.

Sec. 4760, R. S. SEC. 127. PRIVATEER PENSION FUND TO BE PAID TO THE TREASURY.—The two per centum reserved in the hands of the collectors and consuls by the preceding section shall be paid to the Treasury, under the like regulations provided for other public money, and shall constitute a fund for the purposes provided for by that section.

Sec. 4761, R. S. SEC. 128. PENSIONS TO CERTAIN PRIVATEERSMEN.—The Secretary of the Interior is required to place on the pension list, under the like regulations and restrictions as are used in relation to the Navy of the United States, any officer, seaman, or marine who, on board of any private armed vessel bearing a commission of letter of marque, shall have been wounded or otherwise disabled in any engagement with the enemy, or in the line of their duty as officers, seamen, or marines of such private armed vessel; allowing to the captain a sum not exceeding twenty dollars per month; to lieutenants and sailing master a sum not exceeding twelve dollars each per month; to marine officer, boat-swain, gunner, carpenter, master's mate, and prize masters a sum not exceeding ten dollars each per month; to all other officers a sum not exceeding eight dollars each per month for the highest rate of disability, and so in proportion; and to a seaman, or, acting as a marine, the sum of six dollars per month for the highest rate of disability, and so in proportion; which several pensions shall be paid from moneys appropriated for the payment of pensions.

Sec. 4762, R. S. SEC. 129. RECORD OF DISABLED PRIVATEERSMEN.—The commanding officer of every vessel having a commission, or letters of marque and reprisal, shall enter in his journal the name and rank of any officer, and the name of any seaman, who, during his cruise, is wounded or disabled, describing the manner and extent, as far as practicable, of such wound or disability.

Sec. 4763, R. S. SEC. 130. TRANSCRIPT OF JOURNALS AS TO DISABLED PRIVATEERSMEN.—Every collector shall transmit quarterly to the Secretary of the Navy a transcript of such journals as may have been reported to him, so far as it gives a list of the officers and crew, and the description of wounds and disabilities, the better to enable the Secretary to decide on claims for pensions.

Act June 9, 1880, bearing on act July 25, 1866, of July 27, 1868, and Sec. 4712, R. S., Vol. 21, p. 170. SEC. 131. NAVY PENSIONS ALREADY ALLOWED NOT TO BE REDUCED.—Nothing contained in this Act shall operate to reduce the rate of any pension which had actually been allowed to the commissioned, noncommissioned, or petty officers of the Navy, or their widows, or minor children, prior to July twenty-fifth, eighteen hundred and sixty-six; and the Secretary of the Interior is hereby directed to restore all such pensions as have already been so reduced, to the rate originally granted and allowed, to take effect from the date of such reduction.

CHAPTER XIV.

INVALID PENSIONS, BOTH ARMY AND NAVY, SINCE MARCH FOURTH,
EIGHTEEN HUNDRED AND SIXTY-ONE.

Section.	Section.
132. Pension for Disabilities Incurred Since March 4, 1861.	140. Persons on Active or Retired List Not Pensionable.
133. Persons Entitled to Invalid Pensions.	141. No Person Shall Draw Two Pensions.
134. Disability Incurred Since July 27, 1868.	142. Disloyalty a Bar to Pension.
135. Line of Duty.	143. Disloyalty as a Bar Removed in Certain Cases.
136. Termination of Service.	144. Pensions Not Withheld.
137. Colored Soldiers, Formerly Slaves.	145. Pension Not Liable to Attachment.
138. Pension Restored to Persons in the Civil Service.	146. Notice to Pensioner of Contemplated Dropping or Reduction.
139. Continuance of Pension to Certain Persons.	

SEC. 132. PENSION FOR DISABILITIES INCURRED SINCE MARCH FOURTH, EIGHTEEN HUNDRED AND SIXTY-ONE.—Every person specified in the several classes enumerated in the following section, who has been, since the fourth day of March, eighteen hundred and sixty-one, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability, and all applicants for pensions shall be presumed to have had no disability at the time of enlistment, but such presumption may be rebutted.

Sec. 4692, R. S.

Act Mar. 3,
1885, Vol. 23, p.
362

SEC. 133. PERSONS ENTITLED TO INVALID PENSIONS.—The persons entitled as beneficiaries under the preceding section are as follows:

Sec. 4693, R. S.

First. Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.

Second. Any master serving on a gunboat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gunboat or war vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated, while in the line of duty, for procuring his subsistence by manual labor.

Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or nonenlisted person, on account of disability from wounds or injury received in battle with

rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the fourth day of July, eighteen hundred and seventy-four.

Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transitu, or in hospital.

Fifth. Any provost-marshal, deputy provost-marshal, or enrolling officer disabled, by reason of any wound or injury received in the discharge of his duty, to procure a subsistence by manual labor.

SEC. 134. DISABILITY INCURRED SINCE JULY TWENTY-SEVENTH, EIGHTEEN HUNDRED AND SIXTY-EIGHT.—No person shall be entitled to a pension by reason of wounds or injury received or disease contracted in the service of the United States subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, unless the person who was wounded, or injured, or contracted the disease was in the line of duty; and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel, or naval station, or hospital.

SEC. 135. LINE OF DUTY.—Officers absent on sick leave and enlisted men on sick furlough, or on veteran furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital.

SEC. 136. TERMINATION OF SERVICE.—The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization.

SEC. 137. COLORED SOLDIERS, FORMERLY SLAVES.—All colored persons who enlisted in the Army during the war of the rebellion, and who are now prohibited from receiving bounty and pension on account of being borne on the rolls of their regiments as "slaves," shall be placed on the same footing, as to bounty and pension, as though they had not been slaves at the date of their enlistment.

SEC. 138. PENSION RESTORED TO PERSONS IN THE CIVIL SERVICE.—All persons who, under and by virtue of the first section of the Act entitled "An Act supplementary to the several Acts relating to pensions," approved March third, eighteen hundred and sixty-five, were deprived of their pensions during any portion of the time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six, by reason of their being in the civil service of the United States, shall be paid their said pensions, withheld by virtue of said section of the Act aforesaid, for and during the said period of time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six, on which date the said section of the Act aforesaid was repealed.

SEC. 139. CONTINUANCE OF PENSIONS TO CERTAIN PERSONS.—All

pensioners whose names are now on the pension roll, or who are entitled to restoration to the roll under any Act of Congress, shall be entitled to the continuance of such pensions under the provisions and limitations of this Act, and to such further increase of pension as is herein provided.

SEC. 140. PERSONS ON ACTIVE OR RETIRED LIST NOT PENSIONABLE.—No person in the Army, Navy, or Marine Corps shall draw both a pension as an invalid and the pay of his rank or station in the service for any period, unless the disability for which the pension was granted be such as to occasion his employment in a lower grade, or in the civil branch of the service; and no officer of the Army, Navy, or Marine Corps, on the retired list, shall draw or receive any pension, under any law, for any period subsequent to the twenty-ninth day of August, eighteen hundred and ninety; and no pension shall be allowed or paid to any officer, noncommissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list, for any period subsequent to the third day of March, eighteen hundred and ninety-one.

Sec. 4724, R. S.

Act Aug. 29, 1890, Vol. 26, p. 371.

Act Mar. 3, 1891, Vol. 26, p. 1082.

SEC. 141. NO PERSON SHALL DRAW TWO PENSIONS.—Nothing in this Act shall be so construed as to allow more than one pension at the same time to the same person or to persons entitled jointly; but any pensioner who shall so elect may surrender his certificate and receive in lieu thereof a certificate for any other pension to which he would have been entitled had not the surrendered certificate been issued; but all payments previously made for any period covered by the new certificate shall be deducted from the amount allowed by such certificate.

Sec. 4715, R. S.

SEC. 142. DISLOYALTY A BAR TO PENSION.—No money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in or aided or abetted the late rebellion against the authority of the United States.

Sec. 4716, R. S.

SEC. 143. DISLOYALTY AS A BAR, REMOVED IN CERTAIN CASES.—The provisions of the preceding section prohibiting the payment of any money on account of pension to any person, or to the widow, children, or heirs of any deceased person, who in any manner engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterwards voluntarily enlisted in either the Navy or Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty.

Act Mar. 3, 1877, as amended by act Aug. 1, 1892, Vol. 27, p. 340.

SEC. 144. PENSIONS NOT WITHHELD.—The provisions of law which allow the withholding of the compensation of any person who is in arrears shall not be construed to authorize the pension of any pensioner of the United States to be withheld.

Sec. 4734, R. S.

SEC. 145. PENSION NOT LIABLE TO ATTACHMENT.—No sum of money due, or to become due, to any pensioner shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

Sec. 4747, R. S.

SEC. 146. NOTICE TO PENSIONER OF CONTEMPLATED DROPPING OR REDUCTION.—The Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it appears, by proof satisfactory, that such name was put upon such roll through

Sec. 4739, R. S.

Sec. 3 of the false or fraudulent representations; but in no case shall a pension be act June 21, 1879, withdrawn or reduced except upon notice to the pensioner and a hearing upon sworn testimony, except as to the certificate of the examining surgeon: *Provided*, That any pension heretofore or that may hereafter Vol. 21, p. 30.

Act Dec. 21, be granted to any applicant therefor under any law of the United States 1893, Vol. 28, p. 18. authorizing the granting and payment of pensions, on application made and adjudicated upon, shall be deemed and held by all officers of the United States to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than thirty days, the Commissioner of Pensions, after hearing all the evidence, shall decide to annul, vacate, modify, or set aside the decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified.

CHAPTER XV.

RANK IN SERVICE AND RATES OF PENSION.

Section.	Section.
147. Rates for Total Disability in Accordance with Rank.	151. Additional Provisions Respecting Remuster of Officers.
148. Rate of Pension to Certain Officers in the Navy.	152. Rates for Certain Permanent, Specific Disabilities.
149. Rank when Disability was Incurred Determines Rate.	153. Divisible Rate for Nonspecific Disabilities.
150. Rate of Pension in Case of Remuster of Officers.	153½. Minimum Rate of Six Dollars after March 2, 1896.

Sec. 4695, R. S. SEC. 147. RATES FOR TOTAL DISABILITY IN ACCORDANCE WITH RANK.—The pension for total disability shall be as follows, namely: For lieutenant-colonel and all officers of higher rank in the military service and in the Marine Corps, and for captain and all officers of higher rank, commander, surgeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding, and master commanding in the naval service, thirty dollars per month; for major in the military service and in the Marine Corps, and lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, twenty-five dollars per month; for captain in the military service and in the Marine Corps, chaplain in the Army, and provost-marshal, pro-

Act Mar. 3, professor of mathematics, master, or lieutenant of the junior grade, 1883, Vol. 22, p. assistant surgeon, assistant paymaster, and chaplain in the naval service, twenty dollars per month; for first lieutenant in the military service and in the Marine Corps, acting assistant or contract surgeon, and deputy provost-marshal, seventeen dollars per month; for second lieutenant in the military service and in the Marine Corps, first assistant engineer, ensign, and pilot in the naval service, and enrolling officer, 472.

Act Mar. 3, fifteen dollars per month; for cadet midshipman, passed midshipman, 1883, Vol. 22, p. midshipmen, or ensigns of the junior grade, clerks of admirals and paymasters, and of other officers commanding vessels, second and third assistant engineer, master's mate, and all warrant officers in the naval service, ten dollars per month; and for all other persons whose rank or office is not mentioned in this section, eight dollars per month; and the masters, pilots, engineers, sailors, and crews upon the gunboats and war vessels shall be entitled to receive the pension allowed Act Mar. 3, herein to those of like rank in the naval service; and for an inferior 472.

Sec. 4692, R. S.

disability the rate shall be proportionate to that for total disability, as provided by section one hundred and thirty-two of this Act.

SEC. 148. RATE OF PENSION TO CERTAIN OFFICERS IN THE NAVY.—Act June 18, 1878, Vol. 20, p. 166.
 From and after July sixteenth, eighteen hundred and sixty-two, pensions granted to lieutenant-commanders in the Navy for disability, or on account of their death, shall be the same as theretofore provided for lieutenants commanding, and from and after March third, eighteen hundred and seventy-seven, the pension for total disability of passed assistant engineers, assistant engineers, and cadet engineers in the naval service, respectively, shall be the same as the pensions allowed to officers of the line in the naval service with whom they have relative rank; and all acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 149. RANK WHEN DISABILITY WAS INCURRED DETERMINES RATE.—Act Mar. 3, 1877, Vol. 19, p. 403.
 Every commissioned officer of the Army, Navy, or Marine Corps shall receive such and only such pension as is provided in section one hundred and forty-seven of this Act for the rank he held at the time he received the injury or contracted the disease which resulted in the disability on account of which he may be entitled to pension, and any commission or Presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: *Provided*, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty, and that he did not willfully neglect or refuse to be mustered.

SEC. 150. RATE OF PENSION IN CASE OF REMUSTER OF OFFICERS.—Resolution of July 26, 1866, Vol. 14, p. 363.
 In every case in which a commissioned officer actually entered on duty as such commissioned officer, but by reason of being killed in battle, capture by the enemy, or other cause beyond his control, and without fault or neglect of his own, was not mustered within a period of not less than thirty days, the pay department shall allow to such officer full pay and emoluments of his rank from the date on which such officer actually entered on such duty, as aforesaid, deducting from the amount paid, in accordance with this section, all pay actually received by such officer for such period. The heirs or legal representatives of any officer, whose muster into service has been or shall be amended hereby, shall be entitled to receive the arrears of pay due such officer, or the pension provided by law for the grade into which such officer is mustered under the provisions of this section.

SEC. 151. ADDITIONAL PROVISIONS RESPECTING REMUSTER OF OFFICERS.—Act June 3, 1884, as amended by act Feb. 3, 1887, Vol. 24, p. 377.
 (a) The preceding section is hereby so amended, and shall be so construed, that in all cases arising under the same any person who was duly appointed and commissioned, whether his commission was actually received by him or not, shall be considered as commissioned to the grade therein named from the date from which he was to take rank under and by the terms of his said commission, and shall be entitled to all pay and emoluments as if actually mustered at that date: *Provided*, That at the date from which he was to take rank by the terms of his commission, there was a vacancy to which he could be so commissioned, and that he was actually performing the duties of the grade to which he was so commissioned, or, if not so performing such duties, then from such time after the date of his commission as he may have actually entered upon such duties: *And provided further*, That any person held as a prisoner of war, or who may have been

absent by reason of wounds, or in hospital by reason of disabilities received in the service in the line of duty, at the date of his commission, if a vacancy existed for him in the grade to which so commissioned, shall be entitled to the same pay and emoluments as if actually performing the duties of the grade to which he was commissioned, and actually mustered at such date: *And provided further*, That this section and the section hereby amended shall be construed to apply only in those cases where the commission bears date prior to June twentieth, eighteen hundred and sixty-three, or after that date when their commands were not below the minimum number required by existing laws and regulations: *And provided further*, That the pay and allowances actually received shall be deducted from the sums to be paid under this section.

Secs. 2, 3, and 4
of act June 3,
1884, Vol. 23, p.
35.

(b) The heirs or legal representatives of any officer whose muster into the service has been or shall be amended hereby shall be entitled to receive the arrears of pay due such officer, and the pension, if any, authorized by law, for the grade into which such officer is mustered under the provisions of this section.

(c) All claims arising under this section shall be presented to and filed in the proper Department within three years from and after June third, eighteen hundred and eighty-four, and all such claims not so presented and filed within said three years shall be forever barred, and no allowance ever made thereon.

(d) The pay and allowances of a rank or grade paid to and received by any military or naval officer in good faith for services actually performed by such officer in such rank or grade during the war of the rebellion shall not be charged to or recovered back from such officer because of any defect in the title of such officer to the office, rank, or grade in which such services were actually performed.

Sec. 4697, R. S.

SEC. 152. RATES FOR CERTAIN PERMANENT, SPECIFIC DISABILITIES.—For the periods hereinafter indicated, those persons entitled to a less pension than hereinafter provided, who shall have incurred disabilities from wounds, injuries, or disease originating in the military or naval service of the United States, and in the line of duty, shall be entitled to the monthly rates of pension for the disabilities specified and so incurred as follows:

Sec. 4697, R. S.

Sec. 4698, R. S.
Act June 18,
1874, Vol. 18, p. 78.
Act June 17,
1878, Vol. 20, p.
144.
Act Feb. 12,
1889, Vol. 25, p.
659.

(a) For loss of both hands, twenty-five dollars from July fourth, eighteen hundred and sixty-four; thirty-one dollars and twenty-five cents from June fourth, eighteen hundred and seventy-two; fifty dollars from June fourth, eighteen hundred and seventy-four; seventy-two dollars from June seventeenth, eighteen hundred and seventy-eight; one hundred dollars from February twelfth, eighteen hundred and eighty-nine;

Sec. 4697, R. S.
Sec. 4698, R. S.
Act June 18,
1874, Vol. 18, p. 78.
Act June 17,
1878, Vol. 20, p.
144.

(b) For loss of both feet, twenty dollars from July fourth, eighteen hundred and sixty-four; thirty-one dollars and twenty-five cents from June fourth, eighteen hundred and seventy-two; fifty dollars from June fourth, eighteen hundred and seventy-four; seventy-two dollars from June seventeenth, eighteen hundred and seventy-eight;

Sec. 4697, R. S.
Sec. 4698, R. S.
Act June 18,
1874, Vol. 18, p. 78.
Act June 17,
1878, Vol. 20, p.
144.

(c) For loss of sight of both eyes, twenty-five dollars from July fourth, eighteen hundred and sixty-four; thirty-one dollars and twenty-five cents from June fourth, eighteen hundred and seventy-two; fifty dollars from June fourth, eighteen hundred and seventy-four; seventy-two dollars from June seventeenth, eighteen hundred and seventy-eight;

Sec. 4697, R. S.
Sec. 4698, R. S.
Act June 18,
1874, Vol. 18, p. 78.

(d) For loss of sight of one eye, the sight of the other having been previously lost, twenty-five dollars from June sixth, eighteen hundred and sixty-six; thirty-one dollars and twenty-five cents from June fourth,

eight hundred and seventy-two; fifty dollars from June fourth, eighteen hundred and seventy-four; seventy-two dollars from June seventh, eighteen hundred and seventy-eight; Act June 17, 1878, Vol. 20, p. 144.

(e) For loss of one hand and one foot, twenty dollars from March third, eighteen hundred and sixty-five; twenty-four dollars from June fourth, eighteen hundred and seventy-two; thirty-six dollars from February twenty-eighth, eighteen hundred and seventy-seven; Sec. 4697, R. S.
Sec. 4698, R. S.
Act Feb. 28, 1877, Vol. 19, p. 264.

(f) For total disability in one hand and one foot, twenty dollars from June sixth, eighteen hundred and sixty-six; twenty-four dollars from June fourth, eighteen hundred and seventy-two; thirty-six dollars from February twenty-eighth, eighteen hundred and seventy-seven; Sec. 4697, R. S.
Sec. 4698, R. S.
Act Feb. 28, 1877, Vol. 19, p. 264.

(g) For loss of a hand or a foot, fifteen dollars from June sixth, eighteen hundred and sixty-six; eighteen dollars from June fourth, eighteen hundred and seventy-two; twenty-four dollars from March third, eighteen hundred and eighty-three; thirty dollars from August fourth, eighteen hundred and eighty-six; Sec. 4697, R. S.
Sec. 4798, R. S.
Act Mar. 3, 1883, Vol. 22, p. 453.
Act Aug. 4, 1886, Vol. 24, p. 220.

(h) For loss of an arm at or above the elbow, or loss of a leg at or above the knee, fifteen dollars from June sixth, eighteen hundred and sixty-six; eighteen dollars from June fourth, eighteen hundred and seventy-two; twenty-four dollars from June fourth, eighteen hundred and seventy-four; thirty dollars from March third, eighteen hundred and eighty-three; thirty-six dollars from August fourth, eighteen hundred and eighty-six: *Provided*, That in cases where the amputation of the leg above the knee is such as to prevent the use of an artificial limb, the rate of pension at twenty-four dollars per month for loss of the leg shall commence from June fourth, eighteen hundred and seventy-two; Sec. 4697, R. S.
Sec. 4698, R. S.
Act June 18, 1874, Vol. 18, p. 78.
Act Mar. 3, 1883, Vol. 22, p. 453.
Act Aug. 4, 1886, Vol. 24, p. 220.

(i) For loss of a leg at the hip joint, thirty-seven dollars and fifty cents from March third, eighteen hundred and seventy-nine; forty-five dollars from August fourth, eighteen hundred and eighty-six; Act Mar. 3, 1879, Vol. 20, p. 463.
Act Aug. 4, 1886, Vol. 24, p. 220.

(k) For loss of an arm at the shoulder joint, thirty-seven dollars and fifty cents from March third, eighteen hundred and eighty-five; forty-five dollars from August fourth, eighteen hundred and eighty-six; Act Mar. 3, 1885, Vol. 23, p. 437.
Act Aug. 4, 1886, Vol. 24, p. 220.

(l) For loss of a leg so near the hip joint, or of an arm so near the shoulder joint, as to prevent the use of an artificial limb, forty-five dollars from August fourth, eighteen hundred and eighty-six; Act Aug. 4, 1886, Vol. 24, p. 220.

(m) For total and permanent disability in both feet, twenty dollars from June sixth, eighteen hundred and sixty-six; thirty-one dollars and twenty-five cents from June fourth, eighteen hundred and seventy-two; Sec. 4697, R. S.
Sec. 4698, R. S.

(n) For total and permanent disability in both hands, twenty-five dollars from June sixth, eighteen hundred and sixty-six; thirty-one dollars and twenty-five cents from June fourth, eighteen hundred and seventy-two; Sec. 4697, R. S.
Sec. 4698, R. S.

(o) For total and permanent disability in one hand or in one foot, fifteen dollars from June sixth, eighteen hundred and sixty-six; eighteen dollars from June fourth, eighteen hundred and seventy-two; twenty-four dollars from March third, eighteen hundred and eighty-three; thirty dollars from August fourth, eighteen hundred and eighty-six; Act Mar. 3, 1883, Vol. 22, p. 453.
Act Aug. 4, 1886, Vol. 24, p. 220.

(p) For such total and permanent disability as to cause utter helplessness, such as to require regular personal aid and attendance of another person, twenty-five dollars from June sixth, eighteen hundred and sixty-six; thirty-one dollars and twenty-five cents from June Sec. 4697, R. S.
Sec. 4698, R. S.
Act June 18, 1874, Vol. 18, p. 78.

Act June 17, fourth, eighteen hundred and seventy-two; fifty dollars from June 1878, Vol. 20, p. fourth, eighteen hundred and seventy-four, and seventy-two dollars 144.

Act June 16, from June seventeenth, eighteen hundred and seventy-eight, in all 1880, Vol. 21, p. cases in which the rate of fifty dollars per month under the Act of 281. June eighteenth, eighteen hundred and seventy-four, had been granted prior to June sixteenth, eighteen hundred and eighty, and in all other

Act Mar. 4, cases seventy-two dollars from March fourth, eighteen hundred and 1890, Vol. 26, p. ninety, or from the date of the certificate of the examining surgeon 16. or board of examining surgeons showing such degree of disability, and made subsequent to March fourth, eighteen hundred and ninety;

Sec. 4697, R. S. (g) For disability causing incapacity for any manual labor, but

Act Mar. 3, not so great as to require regular personal aid and attention, twenty 1883, Vol. 22, p. dollars from June sixth, eighteen hundred and sixty-six; twenty- 453. four dollars from June fourth, eighteen hundred and seventy-two; thirty dollars from March third, eighteen hundred and eighty-three;

Act July 14, (r) For such a degree of disability as to cause total incapacity for 1892, Vol. 27, p. performing manual labor and to require frequent and periodical, 149. though not regular and constant, personal aid and attendance of another person, fifty dollars from the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to July fourteenth, eighteen hundred and ninety-two;

Act Aug. 4, (s) For total disability of an arm or leg, thirty-six dollars from August 1886, Vol. 24, p. fourth, eighteen hundred and eighty-six; 220.

Sec. 4697, R. S.

Sec. 4698, R. S.

Act Mar. 3, (t) For disability equivalent to the loss of a hand or a foot, fifteen 1883, Vol. 22, p. dollars from June sixth, eighteen hundred and sixty-six; eighteen 453. dollars from June fourth, eighteen hundred and seventy-two; twenty-four dollars from March third, eighteen hundred and eighty-three; but nothing herein contained shall be construed to affect the divisible rate of eighteen dollars provided for in the next succeeding section;

Sec. 4698, R. S.

Act Aug. 27, (u) For total deafness of both ears, thirteen dollars from June fourth, 1888, Vol. 25, p. eighteen hundred and seventy-two; thirty dollars from August twenty- 449. seventh, eighteen hundred and eighty-eight;

Act Aug. 27, (r) For partial deafness, from August twenty-seventh, eighteen 1888, Vol. 25, p. hundred and eighty-eight, such proportion of thirty dollars per month 449. as the Secretary of the Interior may deem equitable, the amount paid to be determined by the degree of disability in each case.

Sec. 4699, R. S. SEC. 153. DIVISIBLE RATE FOR NONSPECIFIC DISABILITIES.—The rate of eighteen dollars per month may be proportionately divided for any degree of disability established for which section one hundred and forty-seven of this Act makes no provision.

SEC. 153½. MINIMUM RATE OF SIX DOLLARS AFTER MARCH SECOND, EIGHTEEN HUNDRED AND NINETY-FIVE.—From and after March second, eighteen hundred and ninety-five, all pensioners on the rolls who are pensioned at less than six dollars per month for any degree of pensionable disability, shall have their pensions increased to six dollars per month; and thereafter whenever any applicant for pension would, under existing rates, be entitled to less than six dollars for any single disability, or several combined disabilities, such pensioner shall be rated at not less than six dollars per month: *Provided*, That the provisions hereof shall not be held to cover any pensionable period prior to March second, eighteen hundred and ninety-five, nor authorize a rerating of any claims for any part of such period, nor prevent the allowance of lower rates than six dollars per month, according to the existing practice in the Pension Office in pending cases covering any pensionable period prior to March second, eighteen hundred and ninety-five.

Act Mar. 2, 1895, Vol. 28, p. 704.

CHAPTER XVI.

WIDOWS' AND MINOR CHILDREN'S PENSION SINCE MARCH FOURTH,
EIGHTEEN HUNDRED AND SIXTY-ONE.

Section.	Section.
154. Widows' and Minor Children's Title.	159. Widows of Colored and Indian Soldiers.
155. Increase to Widows on Account of Minor Children.	160. Legal Marriage. Adulterous Co-habitation.
156. Increased Rate to Widows and Children from March 19, 1886.	161. Remarriage Terminates Pension of Widow.
157. Abandonment of Minor Children by Widow.	162. Widow and Husband not Pensionable for Same Period.
158. Legitimacy of Children.	

SEC. 154. WIDOWS' AND MINOR CHILDREN'S TITLE.—If any person embraced within the provisions of sections one hundred and thirty-two and one hundred and thirty-three of this Act has died since the fourth day of March, eighteen hundred and sixty-one, or hereafter dies, by reason of any wound, injury, or disease, which, under the conditions and limitations of such sections would have entitled him to an invalid pension had he been disabled, his widow, or if there be no widow, or in case of her death without payment to her of any part of the pension hereinafter mentioned, his child, or children under sixteen years of age, shall be entitled to receive the same pension, subject to increase as provided by section one hundred and fifty-six of this Act, as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer, subject, however, to the proviso contained in section one hundred and eighty-eight of this Act, paragraph (c), relative to insane, idiotic, or otherwise permanently helpless children; and if the widow remarry, the child or children shall be entitled from the date of remarriage, except when such widow has continued to draw the pension money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid.

Sec. 4702, R. S.,
as amended by
act Aug. 7, 1882,
Vol. 22, p. 345.

Act Mar. 19,
1886, Vol. 24, p. 5.

Act June 7,
1888, Vol. 25, p.
173.

SEC. 155. INCREASE TO WIDOWS ON ACCOUNT OF MINOR CHILDREN.—The pensions of widows shall be increased from and after the twenty-fifth day of July, eighteen hundred and sixty-six, at the rate of two dollars per month for each child under the age of sixteen years of the husband on account of whose death the claim has been, or shall be, granted. And in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of her pension under the provisions of the pension law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow, if living and entitled to a pension: *Provided*, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged, it shall be granted and paid to the guardian of such child or children: *Pro-*

Sec. 4703, R. S.

vided, further, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldiers' orphans.

Act Mar. 19,
1886, Vol. 24, p. 5.

SEC. 156. INCREASED RATE TO WIDOWS AND CHILDREN FROM MARCH NINETEENTH, EIGHTEEN HUNDRED AND EIGHTY-SIX.—From and after the nineteenth day of March, eighteen hundred and eighty-six, the rate of pension for widows and minor children then on the pension roll, or thereafter to be placed on the pension roll, and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month; and nothing herein shall be construed to affect the existing allowance of two dollars per month for each child under the age of sixteen years: *Provided,* That this section shall apply only to widows who were married to the deceased soldier or sailor prior to the nineteenth day of March, eighteen hundred and eighty-six, and to those who may thereafter marry prior to or during the service of the soldier or sailor. And all acts or parts of acts inconsistent with the provisions of this section are hereby repealed: *And provided further,* That no claim agent or attorney shall be recognized in the adjudication of claims under this section, nor shall any such person be entitled to receive any compensation whatever for services or pretended services in making applications thereunder.

Sec. 4706, R. S.

SEC. 157. ABANDONMENT OF MINOR CHILDREN BY WIDOW.—If any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death, and a child or children under sixteen years of age by such widow, and it shall be duly certified under seal, by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same, on presentation of satisfactory evidence thereof to the Commissioner of Pensions, no pension shall be allowed to such widow until such child or children shall have attained the age of sixteen years, any provisions of law to the contrary notwithstanding, and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, and such pension shall be paid to the guardian of such child or children; but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid.

Sec. 4704, R. S.

SEC. 158. LEGITIMACY OF CHILDREN.—In the administration of the pension laws, children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate.

4706, R. S.

SEC. 159. WIDOWS OF COLORED AND INDIAN SOLDIERS.—The widows of colored and Indian soldiers and sailors who have died, or shall hereafter die, by reason of wounds or injuries received, or casualty received, or disease contracted, in the military or naval service of the United States, and in the line of duty, shall be entitled to receive the pension provided by law without other evidence of marriage than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as man and wife, and were so recognized by their neighbors,

and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or, if otherwise, to date of death; and the children born of any marriage so proved shall be deemed and held to be lawful children of such soldier or sailor, but this section shall not be applicable to any claims on account of persons who enlist after the third day of March, one thousand eight hundred and seventy-three.

SEC. 160. LEGAL MARRIAGE; ADULTEROUS COHABITATION.—Marriages, except such as are mentioned in the preceding section, shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to pension accrued; and from and after August seventh, eighteen hundred and eighty-two, the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation.

Sec. 2 of the Act Aug. 7, 1882, Vol. 22, p. 345.

SEC. 161. REMARRIAGE TERMINATES PENSION OF WIDOW.—The remarriage of any widow entitled to pension shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow having a pension such pension shall cease.

Sec. 4708, R. S.

SEC. 162. WIDOW AND HUSBAND NOT PENSIONABLE FOR SAME PERIOD.—No pension shall be granted to a widow for the same time that her husband received one.

Sec. 4735, R. S.

CHAPTER XVII.

DEPENDENT RELATIVES.

Section.

163. Title, Rate, and Commencement of Pension to Dependent Relatives.

164. Pension Payable only During Dependency.

Section.

165. Increased Rate to Dependent Relatives.

166. Remarriage of Dependent Mother or Sister Terminates her Pension.

SEC. 163. TITLE, RATE, AND COMMENCEMENT OF PENSION TO DEPENDENT RELATIVES.—(a) If any person embraced within the provisions of sections one hundred and thirty-two and one hundred and thirty-three of this Act has died since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter die, by reason of any wound, injury, casualty, or disease which, under the conditions and limitations of such sections, would have entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support, in whole or in part, at the date of his death, such relative or relatives shall be entitled, in the following order of precedence, to receive the same pension, subject to increase as provided in section one hundred and sixty-five of this Act, as such person would have been entitled to had he been totally disabled, to commence, except as hereinafter provided, from the death of such person, namely: First, the mother; secondly, the father; thirdly, orphan brothers and sisters under sixteen years of age, who shall be pensioned jointly: *Provided*, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward.

Sec. 4707, R. S.

(b) The pension of the dependent mother shall commence from the date of death of the person on whose account pension is or shall be

Act Mar. 19, 1886, Vol. 24, p. 5.

Act Mar. 3, 1879, Vol. 20, p. 470.

allowed in all cases where her application for such pension shall have been filed in the Pension Bureau prior to the first day of July, eighteen hundred and eighty; but otherwise it shall commence from the date of filing such application in the Pension Bureau: *Provided*, That if in any case said person shall have left father and mother who are dependent upon him, then, on the death of the mother, the father shall become entitled to the pension commencing from and after the death of the mother, in all cases where the father's application for such pension shall have been filed in the Pension Bureau prior to the first day of July, eighteen hundred and eighty; otherwise the father's pension shall commence from the date of filing such application in the Pension Bureau.

Act Mar. 3,
1879, Vol. 20, p.
470.

Sec. 4707, R. S. (c) Upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under sixteen years of age shall jointly become entitled to such pension until they attain the age of sixteen years, respectively, commencing from the death or remarriage of the party who had the prior right to the pension: *Provided*, That a mother shall be assumed to have been dependent upon her son, within the meaning of this section, if at the date of his death she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of said son or of any other persons not legally bound to aid in her support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into account in estimating a father's means of independent support.

Sec. 4707, R. S. SEC. 164. PENSION PAYABLE ONLY DURING DEPENDENCY.—The pension allowed to any person on account of his or her dependence, as provided in the preceding section, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence.

Act Mar. 19,
1886, Vol. 24, p. 5. SEC. 165. INCREASED RATE TO DEPENDENT RELATIVES.—From and after the nineteenth day of March, eighteen hundred and eighty-six, the rate of pension for dependent relatives then on the pension roll, or thereafter to be placed on the pension roll, and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month: *Provided*, That no claim agent or attorney shall be recognized in the adjudication of claims under this section, nor shall any such person be entitled to receive any compensation whatever for services or pretended services in making applications thereunder.

Sec. 4708, R. S. SEC. 166. REMARRIAGE OF DEPENDENT MOTHER OR SISTER TERMINATES HER PENSION.—The remarriage of any dependent mother or dependent sister, entitled to pension, shall not bar her right to such pension to the date of her remarriage, subject to the limitation contained in section one hundred and sixty-seven of this Act as to date of filing the application, whether an application therefor was filed before or after such marriage; but on the remarriage of any dependent mother or dependent sister, having a pension, such pension shall cease.

Act Mar. 3, 1879,
Vol. 20, p. 470.

CHAPTER XVIII.

COMMENCEMENT OF PENSION AND ALLOWANCE OF ARREARS.

Section.

167. Date of Filing Claim Governs Commencement in Certain Cases.

168. Computation of Arrears.

169. Regulations for Payment of Arrears.

170. Repeal of Former Laws.

Section.

171. No Fee Allowed in Claims for Arrears.

172. Commencement of Increase for Nonspecific Disabilities.

173. Commencement of Ante-rebellion Pensions.

SEC. 167. DATE OF FILING CLAIM GOVERNS COMMENCEMENT IN CERTAIN CASES.—All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, or in consequence of wounds or injuries received or disease contracted since that date, shall commence from the death or discharge of the person on whose account the claim has been or is hereafter granted, if the disability occurred prior to discharge; and if such disability occurred after the discharge, then from the date of actual disability, or from the termination of the right of party having prior title to such pension: *Provided*, The application for such pension has been or is hereafter filed with the Commissioner of Pensions prior to the first day of July, eighteen hundred and eighty, otherwise the pension shall commence from the date of filing the application; but the limitation herein prescribed shall not apply to claims by or in behalf of widows, insane persons, and children under sixteen years of age.

Sec. 2, act Jan. 25, 1879, amended by act Mar. 3, 1879, Vol. 20, p. 470.

SEC. 168. COMPUTATION OF ARREARS.—The rate at which the arrears of invalid pensions shall be allowed and computed in the cases which have been or shall hereafter be allowed, shall be graded according to the degree of the pensioner's disability from time to time, and the provisions of the pension laws in force over the period for which the arrears shall be computed.

Act June 7, 1888, Vol. 25, p. 173.

The preceding section granting arrears of pensions shall be construed to extend to and include pensions on account of soldiers who were enlisted or drafted for the service in the war of the rebellion, but died or incurred disability from a cause originating after the cessation of hostilities, and before being mustered out: *Provided*, That in no case shall arrears of pensions be allowed and paid from a time prior to the date of actual disability.

SEC. 169. REGULATIONS FOR PAYMENT OF ARREARS.—The Commissioner of Pensions is hereby authorized and directed to adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioners, or, if the pensioner shall have died, to the person or persons entitled to the same, all such arrears of pension as the pensioner may be, or would have been, entitled to under the two preceding sections.

Sec. 2, act Jan. 25, 1879, Vol. 20, p. 265.
Sec. 4711, R. S.

SEC. 170. REPEAL OF FORMER LAWS.—Section forty-seven hundred and nine, section forty-seven hundred and seventeen of the Revised Statutes, and all other acts or parts of acts so far as they may conflict with the provisions of the three preceding sections, are hereby repealed.

Act Jan. 25, 1879.
Act Mar. 3, 1879, Vol. 20, p. 470.

SEC. 171. NO FEE ALLOWED IN CLAIMS FOR ARREARS.—No claim agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension.

Sec. 4, act Jan. 25, 1879, Vol. 20, p. 265.
Sec. 4711, R. S.

Sec. 4698½, R.S. SEC. 172. COMMENCEMENT OF INCREASE FOR NONSPECIFIC DISABILITIES.—Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same, made under the pending claim for increase, and in this, as well as all other cases, the certificate of an examining surgeon, or a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions.

Sec. 4713, R.S. SEC. 173. COMMENCEMENT OF ANTE-REBELLION PENSIONS.—In all cases in which the cause of disability or death originated in the service prior to the fourth day of March, eighteen hundred and sixty-one, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim the last paper requisite to establish the same. But no claim allowed prior to the sixth day of June, eighteen hundred and sixty-six, shall be affected by anything herein contained.

CHAPTER XIX.

MISCELLANEOUS ORGANIZATIONS AND PERSONS.

Section.

174. Missouri State Militia.

175. Soldiers Killed by Guerrillas at Centralia, Missouri.

176. War with Nez Perce Indians in Montana.

Section.

177. Jeannette Exploring Expedition.

178. Wreck of the United States Steamer Ashuelot.

Sec. 4722, R.S. SEC. 174. MISSOURI STATE MILITIA.—The provisions of existing pension laws are extended to the officers and privates of the Missouri State Militia and the Provisional Missouri Militia, disabled by reason of injury received or disease contracted in the line of duty while such militia was cooperating with the United States forces, and the widow or children of any such person, dying of injury received or disease contracted under the circumstances herein set forth, shall be entitled to the benefits of this Act.

Act Mar. 3, 1875, Vol. 18, p. 671. SEC. 175. SOLDIERS KILLED BY GUERRILLAS AT CENTRALIA, MISSOURI.—The provisions of existing pension laws are hereby extended to the widows, children, dependent mothers and fathers, or orphan brothers and sisters, in the order named, of those lately discharged soldiers of the Army of the United States and of the members of the Missouri Militia who were murdered by guerrillas at Centralia, Missouri, in eighteen hundred and sixty-four, while being transported on the North Missouri Railroad.

Act Mar. 3, 1881, Vol. 21, p. 641. SEC. 176. WAR WITH NEZ PERCÉ INDIANS IN MONTANA.—All persons who joined the forces of the United States, in the Territory of Montana, during the war with the Nez Percé Indians, and who were wounded or disabled in such service, and the heirs of all who were killed in such service shall be entitled to all the benefits of the pension laws, in the same manner and to the same extent as if they had been duly mustered into the regular or volunteer forces of the United States.

Secs. 1, 2, act Jan. 3, 1887, Vol. 24, p. 882. SEC. 177. JEANNETTE EXPLORING EXPEDITION.—The twenty-third day of March, eighteen hundred and eighty-two, being the date of finding the remains of the commanding officer and others of the exploring expedition of the steamer Jeannette, which was wrecked

in the Arctic seas, shall be deemed and taken to be the date of the decease of the following-named officers and enlisted men of the expedition who lost their lives in the retreat from the wreck of the said steamer *Jeannette*, namely: Lieutenant-Commander George W. De Long; Lieutenant Charles W. Chipp; Passed Assistant Surgeon James M. Ambler; Jerome J. Collins, meteorologist; William Dunbar, ice pilot; Walter Lee, machinist; Henrick H. Kaack, Carl A. Gortz, Adolph Dressler, Hans H. Erichsen, Ah Sam, Alfred Sweetman, Henry D. Warren, Peter E. Johnson, Edward Star, and Albert G. Kuehne, seamen; Nels Iverson, George W. Boyd, and Walter Sharvill, coal heavers; and Seaman Alexy, and in any case where heretofore a pension has been granted, or may hereafter in fact be granted, to any such widow, child, or dependent parent, by reason of the death of any of the persons named in this section, in the payment of such pension account shall be taken of any sum paid to such person, as twelve months' pay of the deceased, under the provisions of the Act of Congress approved January third, eighteen hundred and eighty-seven, and, to the extent of its amount, said sum shall be in lieu and stead of such pension, and no further.

Sec. 3, act Jan. 29, 1887, Vol. 24, p. 882.

SEC. 178. WRECK OF THE UNITED STATES STEAMER *ASHUELLOT*.— The widow, child, or children, or in the case there be not such, then the surviving parent or parents of those in the service who were lost in the wreck of the United States steamer *Ashuelot*, namely: William Gronan, seaman; George Valentine, captain of the hold; Fritz Rackenbach, quartermaster; William Bronsman, landsman; Saint Leger Crone, quarter gunner; Ah Kid, painter; Sun Shing, carpenter's mate; George Ashton, carpenter; Ah Yoo, landsman; Andrew Scotland, private marine; and Benjamin H. Wohlrab, landsman, shall be entitled to, and receive, out of any money in the Treasury of the United States not otherwise appropriated, as follows, to wit: The relatives, in the order named, of the persons connected with the United States steamer *Ashuelot* hereinbefore referred to, a sum equal to twelve months' sea pay of each person lost: *Provided*, That in any case where heretofore a pension has been granted, or may hereafter in fact be granted, to any such widow, child, or dependent parent, by reason of the death of any of the persons named in this section, in the payment of such pension account shall be taken of any sum paid as above provided, and to the extent of its account said sum shall be in lieu and stead of such pension, and no further.

Sec. 2, act Jan. 29, 1887, Vol. 24, p. 890.

CHAPTER XX.

SPECIAL ACTS OF CONGRESS GRANTING PENSIONS.

Section.

179. Rate and Commencement of Special-Act Pensions.
180. Certain Special-Act Pensions to be Varied by General Laws.

Section.

181. No Person to Receive both Special-Act and General-Law Pensions.

SEC. 179. RATE AND COMMENCEMENT OF SPECIAL-ACT PENSIONS.— When the rate, commencement, and duration of a pension allowed by special Act are fixed by such Act, they shall not be subject to be varied by the provisions and limitations of the general pension law; but when not thus fixed, the rate and continuance of the pension shall be subject to variation in accordance with the general laws, and its commencement shall date from the passage of the special Act; and the

Sec. 4720, R. S.

Commissioner of Pensions shall, upon satisfactory evidence that fraud was perpetrated in obtaining such special Act, suspend payment thereupon until the propriety of repealing the same can be considered by Congress.

Act June 6, 1874,
Vol. 18, p. 61.

SEC. 180. CERTAIN SPECIAL-ACT PENSIONS TO BE VARIED BY GENERAL LAWS.—All persons who were, on June sixth, eighteen hundred and seventy-four, entitled to pensions under special Acts fixing the rate of such pensions, and were then receiving or entitled to receive a less pension than that allowed by the general pension laws under like circumstances, are, in lieu of their rate of pension on said date, hereby declared to be entitled to the benefits and subject to the limitations of the general pension laws; and this section shall go into effect from and after June sixth, eighteen hundred and seventy-four: *Provided*, That this section shall not be construed to reduce any pension granted by special Act.

Sec 5, act July
25, 1882, Vol. 22, p.
176.

SEC. 181. NO PERSON TO RECEIVE BOTH SPECIAL-ACT AND GENERAL-LAW PENSIONS.—No person who is now receiving or shall hereafter receive a pension under a special Act shall be entitled to receive in addition thereto a pension under the general law, unless the special Act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law.

CHAPTER XXI.

DISABILITY AND DEPENDENT PENSIONS FOR SERVICE IN THE CIVIL WAR.

Section.	Section.
182. Pensions under the Act of June 27, 1890.	185. Commencement of pension under Act June 27, 1890.
183. Pensions to Army Nurses of the Civil War.	186. Presumption of death from unexplained absence.
184. Pension Restored to certain Non-residents	187. Rule of construction for this Act.

Act June 27,
1890, Vol. 26, p.
182.

SEC. 182. PENSIONS UNDER ACT OF JUNE TWENTY-SEVENTH, EIGHTEEN HUNDRED AND NINETY.—(a) In considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease which, under the conditions and limitations of existing laws, would have entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown as required by law, it shall be necessary only to show, by competent and sufficient evidence, that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: *Provided*, That all pensions allowed to dependent parents under this section shall commence from date of the filing of the application hereunder and shall continue no longer than the existence of the dependence.

(b) All persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact, according to such rules and regulations as the Secretary of the Interior may provide, be placed

upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month and not less than six dollars per month, proportioned to the degree of inability to earn a support; and such pension shall commence from the date of the filing of the application in the Pension Office after the twenty-seventh day of June, eighteen hundred and ninety, upon proof that the disability then existed, and shall continue during the existence of the same: *Provided*, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this section; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: *Provided, however*, That no person shall receive more than one pension for the same period: *And provided further*, That rank in the service shall not be considered in applications filed under this section.

(c) If any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late war of the rebellion, and who was honorably discharged has died, or shall hereafter die, leaving a widow without other means of support than her daily labor, or minor children under the age of sixteen years, such widow shall, upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension roll from the date of the application therefor under this section, at the rate of eight dollars per month during her widowhood, and shall also be paid two dollars per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided*, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor after the twenty-seventh day of June, eighteen hundred and ninety: *And provided further*, That said widow shall have married said soldier prior to the twenty-seventh day of June, eighteen hundred and ninety.

(d) No agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this section shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than ten dollars, which sum shall be payable only upon the order of the Commissioner of Pensions, by the pension agent making payment of the pension allowed, and any person who shall violate any of the provisions of this section, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars, or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.

Res. Feb. 15,
1893, Vol. 28, p.
970.

(e) The provisions of this section are hereby extended to include the officers and privates of the Missouri State Militia and the Provisional Missouri Militia who served ninety days during the late war of the rebellion, and were honorably discharged, and to the widows and minor children of such persons. The provisions of this section shall include all such persons now on the pension rolls or who may hereafter apply to be admitted thereto.

Act Aug. 5,
1892, Vol. 27, p.
348.

SEC. 183. PENSIONS TO ARMY NURSES OF THE CIVIL WAR.—(a) All women employed by the Surgeon-General of the Army as nurses, under contract or otherwise, during the late war of the rebellion, or who were employed as nurses during such period by authority which is recognized by the War Department, and who rendered actual service as nurses in attendance upon the sick or wounded in any regimental, post, camp, or general hospital of the armies of the United States for a period of six months or more, and who were honorably relieved from such service, and who are now or may hereafter be unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of pensioners of the United States and be entitled to receive a pension of twelve dollars per month and such pension shall commence from the date of filing of the application in the Pension Office after the fifth day of August, eighteen hundred and ninety-two: *Provided*, That no person shall receive more than one pension for the same period.

(b) No fee compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this section, and any person who may make any claim upon any applicant for any fee, compensation, or allowance shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars, or imprisoned at hard labor not exceeding one year, or both, in the discretion of the court; and it shall be the duty of the Interior and War Departments to render all proper aid to applicants under this section.

Act Mar. 2,
1895, Vol. 28, p.
703.

SEC. 184. PENSION RESTORED TO CERTAIN NONRESIDENTS.—So much of the fourth proviso of an Act entitled "An Act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and ninety-four, and for other purposes," approved March first, eighteen hundred and ninety-three, which reads as follows: "That from and after July first, eighteen hundred and ninety-three, no pension shall be paid to a nonresident who is not a citizen of the United States, except for actual disabilities incurred in the service," is hereby repealed.

Act Mar. 6,
1896, Vol. 29, p.
45.

SEC. 185. COMMENCEMENT OF PENSION UNDER ACT JUNE 27, 1890.—Whenever a claim for pension under the Act of June 27, 1890, has been, or shall hereafter be, rejected, suspended, or dismissed, and a new application shall have been, or shall hereafter be, filed, and a pension has been, or shall hereafter be, allowed in such claim, such pension shall date from the time of filing the first application, provided the evidence in the case shall show a pensionable disability to have existed, or to exist, at the time of filing such first application, anything in any law, or ruling of the Department to the contrary notwithstanding.

Act Mar. 13,
1896, Vol. 29, p.
57.

SEC. 186. PRESUMPTION OF DEATH FROM UNEXPLAINED ABSENCE.—In considering claims filed under the pension laws, the death of an enlisted man or officer shall be considered as sufficiently proved if

satisfactory evidence is produced establishing the fact of the continued and unexplained absence of such enlisted man or officer from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. And any pension granted under this Act shall cease upon proof that such officer or enlisted man is still living.

SEC. 187. RULE OF CONSTRUCTION FOR THIS ACT.—Nothing in this Act contained shall be so construed as to change or modify the provisions of existing laws but it shall be construed solely as a codification and orderly arrangement of the pension laws in force March fourth, eighteen hundred and ninety-seven.

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B.—LAWS ENACTED AND REPEALED SINCE MARCH 4, 1861.

1. Accrued pension.

- (a) *Section 4718, Revised Statutes.*
- (b) *Act of March 1, 1889.*

2. Biennial examinations.

- (a) *Section 4771, Revised Statutes.*
- (b) *Section 4772, Revised Statutes.*
- (c) *Section 4773, Revised Statutes.*

3. Boards of examining surgeons.

- (a) *Section 4774, Revised Statutes.*

4. Commutation for artificial limbs.

- (a) *Section 4780, Revised Statutes.*

5. Compensation of pension agents.

- (a) *Section 4781, Revised Statutes.*
- (b) *Section 4782, Revised Statutes.*
- (c) *Act of June 20, 1874.*

6. Disloyalty.

- (a) *Act of February 4, 1862.*
- (b) *Joint resolution of March 2, 1867.*

7. Fees of agents and attorneys.

- (a) *Section 4785, Revised Statutes.*
- (b) *Act of June 20, 1878.*

8. Limitation.

- (a) *Section 4709, Revised Statutes.*
- (b) *Section 4710, Revised Statutes.*
- (c) *Section 4717, Revised Statutes.*

9. Pay and pension.

- (a) *Act of March 3, 1865.*

1. ACCRUED PENSION.

(a) *Section 4718, Revised Statutes.*

If any pensioner has died or shall hereafter die, or if any person entitled to a pension, having an application therefor pending, has died or shall hereafter die, his widow, or if there is no widow, the child or children of such person under the age of 16 years shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children; and if no widow or child survive, no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to reimburse the person who bore the expenses of the last sickness and burial of the decedent, in cases where he did not leave sufficient assets to meet such expenses.

(Repealed by the act of March 2, 1895; 28 Stat., 965.)

(b) *Act of March 1, 1889 (25 Stat., 782).*

An act relating to the payment of pensions where, subsequent to issuance of check, pensioner dies. * * * That a check or checks drawn by a pension

agent in payment of pension due, and mailed by him to the address of the pensioner, shall constitute payment within the meaning of section forty-seven hundred and sixty-five, Revised Statutes, in the event of the death of a pensioner subsequent to the mailing and before the receipt of said check; and the amount which may have accrued on the pension of any pensioner subsequent to the last quarterly payment on account thereof and prior to the death of such pensioner shall in the case of a husband be paid to his widow, or if there be no widow, to his surviving minor children or the guardian thereof, and in the case of a widow to her minor children: *Provided*, That thereafter whenever a pension certificate shall have been issued and the pensioner mentioned therein dies before payment shall have been made, leaving no widow and no surviving minor children, the accrued pension due on said certificate to the date of the death of such pensioner may, in the discretion of the Secretary of the Interior, be paid to the legal representatives of said pensioner: *And provided further*, That hereafter all United States officers now authorized to administer oaths are hereby required and directed to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers for their pensions free of charge.

(Repealed by the act of March 2, 1895; 28 Stat., 965.)

2. BIENNIAL EXAMINATIONS.

(a) Section 4771, Revised Statutes.

In all cases of application for the payment of pensions to invalid pensioners to the fourth day of September of an odd year, the certificate of an examining surgeon, duly appointed by the Commissioner of Pensions, or of a surgeon of the Army or Navy, stating the continuance of the disability for which the pension was originally granted, and the degree of such disability at the time of making the certificate, shall be required to accompany the vouchers, and a duplicate thereof shall be filed in the office of the Commissioner of Pensions; and if in a case of continued disability it shall be stated at a degree below that for which the pension was originally granted or was last paid, then pensioner shall only be paid for the quarter then due at the rate stated in the certificate. But where the pension was originally granted for a disability in consequence of the loss of a limb or other essential portion of the body, or for other cause, which can not, either in whole or in part, be removed, or when a disability is certified, by competent examining surgeons, to the satisfaction of the Commissioner of Pensions, to have become permanent in a degree equal to the whole rate of pension, the above certificate shall not be necessary to entitle the pensioner to payment.

(Repealed by the act of June 21, 1879; 21 Stat., 30.)

(b) Section 4772, Revised Statutes.—Frequency of examinations discretionary with Commissioner.

Nothing in the preceding section shall be construed to prevent the Commissioner of Pensions from requiring a more frequent examination, if, in his judgment, it is necessary.

(Repealed by the act of June 21, 1879; 21 Stat., 30.)

(c) Section 4773, Revised Statutes.—Certificates of unofficial surgeons—when acceptable.

The biennial certificate of two unappointed civil surgeons shall not be accepted in any case, except upon satisfactory evidence that an examination by a commissioned or duly appointed surgeon is impracticable.

(Repealed by the act of June 21, 1879; 21 Stat., 30.)

3. BOARDS OF EXAMINING SURGEONS.

(a) **Section 4774, Revised Statutes.**

The Commissioner of Pensions is authorized to organize, at his discretion, boards of examining surgeons, not to exceed three members, and each member of a board thus organized, who is actually present and makes, in connection with other members or member, an ordered or periodical examination, shall be entitled to the fee of one dollar, or the receipt of a proper certificate of such examination by the Commissioner of Pensions.

(Superseded by section 4, act of July 25, 1882 (22 Stat., 175), which was amended by the act of March 3, 1885 (23 Stat., 362).)

4. COMMUTATION FOR ARTIFICIAL LIMBS.

(a) **Section 4789, Revised Statutes.**

The Surgeon-General shall certify to the Commissioner of Pensions a list of all soldiers who elect to receive money commutation instead of limbs or apparatus, with the amount due to each, and the Commissioner of Pensions shall cause the same to be paid to such soldiers in the same manner as pensions are paid.

(Superseded by section 1, act of August 15, 1876; 19 Stat., 204.)

5. COMPENSATION OF PENSION AGENTS.

(a) **Section 4781, Revised Statutes.**

Agents for paying pensions shall receive two percentum of all disbursements made by them to pensioners. There shall be allowed, however, over and above such compensation to every pension agent disbursing fifty thousand dollars annually, not exceeding five hundred dollars a year for clerk hire, office rent, and office expenses; to every agent disbursing one hundred thousand dollars annually, not exceeding seven hundred and fifty dollars a year; and for every fifty thousand dollars additional, not exceeding two hundred and fifty dollars a year for like purposes. But in no case shall the aggregate amount of compensation to any one agent paying both army and navy pensions, exceed four thousand dollars a year.

(Repealed by the act of June 14, 1878; 20 Stat., 112.)

(b) **Section 4782, Revised Statutes.—Compensation for executing vouchers.**

In addition to the compensation allowed in this title, each pension agent shall be allowed, as full compensation for all service, including postage, required by the provisions of sections forty-seven hundred and sixty-four and forty-seven hundred and sixty-five, the sum of thirty cents, and no more, for each voucher prepared and paid by him, which amount shall be paid by the United States.

(Repealed by the act of June 14, 1878; 20 Stat., 112.)

(c) **Act of June 20, 1874.—Compensation for executing vouchers reduced.**

An act making appropriations for the payment of invalid and other pensions of the United States for the year ending June thirtieth, eighteen hundred and seventy-five: * * * *Provided further*, That the fees for preparing vouchers and administering oaths, which are now by law thirty cents in each case, shall hereafter be twenty-five cents for the same and no more.

(Repealed by the act of June 14, 1878; 20 Stat., 112.)

6. DISLOYALTY.

(a) Act of February 4, 1862 (12 Stat., 337).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to strike from the pension rolls the names of all such persons as have or may hereafter take up arms against the Government of the United States, or who have in any manner encouraged the rebels or manifested a sympathy with their cause.

(Repealed by the act of March 9, 1878 (20 Stat., 28), so far as it affects survivors on March 9, 1878, pensioned on account of service in the war of 1812, or in any Indian war, and whose name had been theretofore stricken from the rolls under above act.)

(b) Joint resolution of March 2, 1867 (14 Stat., 571).

Resolved, That until otherwise ordered it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government which accrued or existed prior to the thirteenth of April, eighteen hundred and sixty-one, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who, during said rebellion, was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand until this resolution is modified or repealed: *Provided,* That this resolution shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to April first, eighteen hundred and sixty-one, to creditors of said contractors, loyal citizens of loyal States, in payment of debts incurred prior to March first, eighteen hundred and sixty-one.

(Repealed by the act of March 9, 1878 (20 Stat., 18), so far as it affects persons provided for by said act.)

7. FEES OF AGENTS AND ATTORNEYS.

(a) Section 4785, Revised Statutes.

No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars.

(Repealed by the act of June 20, 1878 (20 Stat., 243) and reenacted July 4, 1884 (23 Stat., 99).)

(b) Act of June 20, 1878 (20 Stat., 243).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, It shall be unlawful for any attorney, agent, or other person to demand or receive for his services in a pension case a greater sum than ten dollars. No fee contract shall hereafter be filed with the Commissioner of Pensions in any case. In pending cases in which a fee contract has heretofore been filed, if the pension shall be allowed, the Commissioner of Pensions shall approve the same as to the amount of fee to be paid at the amount specified in the contract. Sections forty-seven hundred and sixty-eight, forty-seven hundred and sixty-nine, and forty-seven hundred and eighty-six of the Revised Statutes shall not apply to any case or claim hereafter filed, nor to any pending claim in which the claimant has not been represented by an agent or attorney prior to the passage of this act.

SEC. 2. Section forty-seven hundred and eighty-five of the Revised Statutes is hereby repealed.

(Repealed by the act of July 4, 1884; 23 Stat., 99.)

8. LIMITATION.

(a) Section 4709, Revised Statutes.—Five year.

All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, or in consequence of wounds and injuries received or disease contracted since that date, shall commence from the death or discharge of the person on whose account the claim has been, or is hereafter, granted, or from the termination of the right of party having prior title to such pension; provided the application for such pension has been or is hereafter filed with the Commissioner of Pensions within five years after the right thereto has accrued; otherwise the pension shall commence from the date of filing the last evidence necessary to establish the same. But the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under 16 years.

(Repealed by the act of March 3, 1879; 20 Stat., 470. Modified as to widows by the act of June 7, 1888; 25 Stat. 173.)

(b) Section 4710, Revised Statutes.—When right to pension accrued.

In construing the preceding section, the right of persons entitled to pension shall be recognized as accruing at the date therein stated for the commencement of such pension, and the right of a dependent father or dependent brother to pension shall not in any case be held to have accrued prior to the sixth day of June, eighteen hundred and sixty-six; and the right of all other classes of claimants, if applying on account of the death of a person who was regularly mustered into the service, or regularly employed in the Navy or upon the gunboats or war vessels of the United States, shall not be held to have accrued prior to the fourteenth day of July, eighteen hundred and sixty-two; if applying on account of a chaplain in the Army, their right shall not be held to have accrued prior to the ninth day of April, eighteen hundred and sixty-four; if applying on account of an enlisted soldier who was not mustered, or a nonenlisted man in temporary service, their right shall not be held to have accrued prior to the fourth day of July, eighteen hundred and sixty-four; if applying on account of an acting assistant or contract surgeon their right shall not be held to have accrued prior to the third day of March, eighteen hundred and sixty-five; if applying on account of persons enlisted as teamsters, wagoners, artificers, hospital stewards, or farriers their right shall be held to have accrued prior to the sixth day of June, eighteen hundred and sixty-six; and the right of all classes of claimants applying on account of a provost-marshal, or enrolling officer, shall not be held to have accrued prior to the twenty-fifth day of July, eighteen hundred and sixty-six. But the right of a widow or dependent mother who married prior, and did not apply till subsequent, to the twenty-seventh day of July, eighteen hundred and sixty eight, shall not be held to have accrued prior to that date.

(See note to section preceding.)

(c) Section 4717, Revised Statutes.—Claims to be prosecuted within five years.

No claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record evidence from the War or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: *Provided*, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present through the Pension Office, to the Adjutant-General of the Army or the Surgeon-General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty; and if such evidence is deemed

satisfactory by the officer to whom it may be submitted, he shall cause a record of the fact so proved to be made, and a copy of the same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claim shall thereby be removed.

(Repealed by the act of January 25, 1879, 20 Stat., 265.)

9. PAY AND PENSION.

(a) Act of March 3, 1865 (13 Stat., 499).

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no invalid pensioner, now or hereafter in the service of the United States, shall be entitled to draw a pension for any period of time during which he is or shall be entitled to the full pay or salary which an able-bodied person discharging like duties to the Government is allowed by law. * * **

(Repealed by the act of June 6, 1866 (14 Stat., 57), and pensions withheld under this act between March 3, 1865, and June 6, 1866, were restored by act of March 1, 1879 (20 Stat., 327).)

C.—BOUNTY-LAND LAWS.

REVISED STATUTES.

Sec.

- 2414. Military bounty-land warrants and locations assignable.
- 2415. Warrants located at \$1.25; excess paid in cash.
- 2416. Claims for bounty lands in virtue of certain acts named, &c.
- 2417. Same subject.
- 2418. Bounty lands for soldiers in certain wars.
- 2419. Certain classes of persons in the Mexican War, their widows, &c., entitled to forty acres.
- 2420. Militia and volunteers in service since 1812.
- 2421. Persons not entitled under preceding sections.
- 2422. Period of captivity added to actual service.
- 2423. Warrant and patent, to issue when.
- 2424. Widows of persons entitled.
- 2425. Additional bounty lands, &c.
- 2426. Classes under last section specified.
- 2427. What classes of persons entitled under section 2425, without regard to length of service.
- 2428. Widows and children of persons entitled under section 2425.
- 2429. Subsequent marriage of widow.
- 2430. Minors under section 2428.
- 2431. Proof of service.
- 2432. Former evidence of right to bounty land to be received in certain cases.
- 2433. Allowance of time of service for distance from home to place of muster or discharge.
- 2434. Indians included.
- 2435. Former evidence of right to a pension to be received in certain cases, on application for bounty land.
- 2436. Sales, mortgages, letters of attorney, &c., made before issue of warrant to be void.
- 2437. Warrants to be located free of expense by Commissioner of Land Office, &c.
- 2438. Deserters not entitled to bounty land.
- 2439. Lost warrants, provisions for.
- 2440. Discharges, omissions, and loss of, provided for.
- 2441. New warrant issued in lieu of lost warrant.
- 2442. Regulations by Secretary of Interior.
- 2443. Mode of issuing patents to the heirs of persons entitled to bounty lands.
- 2444. Death of claimant after establishing right, and before issuing of warrant.
- 2445. When proofs may be filed by legal representatives.
- 2446. Relocation of military bounty-land warrants in cases of error.

SEC. 2414. MILITARY BOUNTY-LAND WARRANTS AND LOCATIONS ASSIGNABLE.—All warrants for military bounty lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing, made and executed according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owner of the warrant or location.

SEC. 2415. WARRANTS LOCATED AT \$1.25; EXCESS PAID IN CASH.—The warrants which have been or may hereafter be issued in pursuance of law may be located according to the legal subdivisions of the

public lands in one body upon any lands of the United States subject to private entry at the time of such location at the minimum price. When such warrant is located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on. But where such tract is rated at one dollar and twenty-five cents per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof.

2 July, 1864, c. 226, s. 1, v. 13, p. 378. SEC. 2416. CLAIMS FOR BOUNTY LANDS IN VIRTUE OF CERTAIN ACTS NAMED, ETC.—In all cases of warrants for bounty lands, issued by virtue of an act approved July twenty-seven, one thousand eight hundred

and forty-two, and of two acts approved January twenty-seven, one thousand eight hundred and thirty-five, therein and thereby revised, and of two acts to the same intent, respectively, approved June twenty-six, eighteen hundred and forty-eight, and February eight, eighteen hundred and fifty-four, for military services in the revolutionary war, or in the war of eighteen hundred and twelve with Great Britain, which remained unsatisfied on the second day of July, eighteen hundred and sixty-four, it is lawful for the person in whose name such warrant issued, his heirs or legal representatives, to enter in quarter sections, at the proper local land office in any of the States or Territories, the quantity of the public lands subject to private entry which he is entitled to under such warrant.

2 July, 1864, c. 226, s. 2, v. 13, p. 379. SEC. 2417. SAME SUBJECT.—All warrants for bounty lands referred to in the preceding section may be located at any time in conformity with the general laws in force at the time of such location.

11 Feb., 1847, c. 8, s. 9, v. 9, pp. 125, 126. SEC. 2418. BOUNTY LANDS FOR SOLDIERS IN CERTAIN WARS.—Each of the surviving, or the widow or minor children of deceased, commissioned and noncommissioned officers, musicians, or privates, whether

28 Sept., 1850, c. 85, s. 1, v. 9, p. 520. of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company, or detachment in the service of the United States, in the war with Great Britain, declared on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and prior to the third of March, eighteen hundred and fifty, and each of the commissioned officers who was engaged in the military service of the United States in the war with Mexico, shall be entitled to lands as follows: Those who engaged to serve twelve months or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres; but wherever any officer or soldier was honorably discharged in consequence of disability contracted in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve. All the persons enumerated in this section who enlisted in the regular army, or were mustered in any volunteer company for a period of not less than twelve months, and who served in the war with Mexico and received an honorable discharge, or who were killed or died of wounds received or sickness incurred in the course of such service, or were discharged before the expiration of the term of service in consequence of wounds received or sickness

incurred in the course of such service, shall be entitled to receive a certificate or warrant for one hundred and sixty acres of land; or at option Treasury scrip for one hundred dollars bearing interest at six per cent per annum, payable semiannually, at the pleasure of the Government. In the event of the death of any one of the persons mentioned in this section during service, or after his discharge, and before the issuing of a certificate or warrant, the warrant or scrip shall be issued in favor of his family or relatives; first, to the widow and his children; second, his father; third, his mother; fourth, his brothers and sisters.

SEC. 2419. CERTAIN CLASSES OF PERSONS IN THE MEXICAN WAR, THEIR WIDOWS, ETC., ENTITLED TO FORTY ACRES.—The persons enumerated in the preceding section received into the service after the commencement of the war with Mexico for less than twelve months, and who served such term, or were honorably discharged, are entitled to receive a certificate or warrant for forty acres, or scrip for twenty-five dollars if preferred, and in the event of the death of such person during service, or after honorable discharge before the eleventh of February, eighteen hundred and forty-seven, the warrant or scrip shall issue to the wife, child, or children, if there be any, and if none, to the father, and if no father, to the mother of such soldier.

Ibid., p. 126.

SEC. 2420. MILITIA AND VOLUNTEERS IN SERVICE SINCE 1812.—Where the militia, or volunteers, or State troops of any State or Territory, subsequent to the eighteenth day of June, eighteen hundred and twelve, and prior to March twenty-second, eighteen hundred and fifty-two, were called into service, the officers and soldiers thereof shall be entitled to all the benefits of section two thousand four hundred and eighteen, upon proof of length of service as therein required.

22 Mar., 1852, c. 19, s. 4, v. 10, p. 4.

SEC. 2421. PERSONS NOT ENTITLED UNDER PRECEDING SECTIONS.—No person shall take any benefit under the provisions of the three preceding sections if he has received, or is entitled to receive, any military bounty land under any act of Congress passed prior to the twenty-second March, eighteen hundred and fifty-two.

28 Sept., 1850, c. 85, s. 1, v. 9, p. 520.

SEC. 2422. PERIOD OF CAPTIVITY ADDED TO ACTUAL SERVICE.—The period during which any officer or soldier remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so retained in captivity shall receive land under the provisions of sections twenty-four hundred and eighteen and twenty-four hundred and twenty in the same manner that he would be entitled in case he had entered the service for the whole term, made up by the addition of the time of his captivity, and had served during such term.

22 Sept., 1850, c. 85, s. 2, v. 9, p. 520.

SEC. 2423. WARRANT AND PATENT TO ISSUE, WHEN.—Every person for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty shall receive a warrant from the Department of the Interior for the quantity of land to which he is entitled; and upon the return of such warrant, with evidence of the location thereof having been legally made to the General Land Office, a patent shall be issued therefor.

22 Sept., 1850, c. 85, s. 3, v. 9, p. 520.

SEC. 2424. WIDOWS OF PERSONS ENTITLED.—In the event of the death of any person for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty, and who did not receive bounty land for his services, a like warrant shall issue in favor of his widow, who shall be entitled to one hundred and sixty acres of land in case her husband was killed in battle, nor

Ibid.

shall a subsequent marriage impair the right of any widow to such warrant if she be a widow at the time of making her application.

3 Mar., 1855, c.
207, ss. 1, 3, v. 10,
pp. 701, 702.

SEC. 2425. ADDITIONAL BOUNTY LANDS, ETC.—Each of the surviving persons specified in the classes enumerated in the following section who has served for a period of not less than fourteen days in any of the wars in which the United States have been engaged since the year seventeen hundred and ninety and prior to the third day of March, eighteen hundred and fifty-five, shall be entitled to receive a warrant from the Department of the Interior for one hundred and sixty acres of land; and where any person so entitled has, prior to the third day of March, eighteen hundred and fifty-five, received a warrant for any number of acres less than one hundred and sixty, he shall be allowed a warrant for such quantity of land only as will make, in the whole, with what he may have received prior to that date, one hundred and sixty acres.

3 Mar., 1855, c.
207, ss. 1, 8, 10, v.
10, p. 701.

14 May, 1856, c.
26, ss. 4, 5, v. 11,
pp. 8, 9.

SEC. 2426. CLASSES UNDER LAST SECTION SPECIFIED.—The classes of persons embraced as beneficiaries under the preceding section are as follows, namely:

First. Commissioned and noncommissioned officers, musicians, and privates, whether of the regulars, volunteers, rangers, or militia, who were regularly mustered into the service of the United States.

Second. Commissioned and noncommissioned officers, seamen, ordinary seamen, flotilla men, marines, clerks, and landsmen in the Navy.

Third. Militia, volunteers, and State troops of any State or Territory called into military service and regularly mustered therein and whose services have been paid by the United States.

Fourth. Wagon masters and teamsters who have been employed under the direction of competent authority in time of war in the transportation of military stores and supplies.

Fifth. Officers and soldiers of the Revolutionary war, and marines, seamen, and other persons in the naval service of the United States during that war.

Sixth. Chaplains who served with the Army.

Seventh. Volunteers who served with the armed forces of the United States in any of the wars mentioned, subject to military orders, whether regularly mustered into the service of the United States or not.

3 Mar., 1855, c.
207, ss. 3, 9, 11, v.
10, p. 702.

SEC. 2427. WHAT CLASSES OF PERSONS ENTITLED UNDER SECTION 2425, WITHOUT REGARD TO LENGTH OF SERVICE.—The following class of persons are included as beneficiaries under section twenty-four hundred and twenty-five, without regard to the length of service rendered:

First. Any of the classes of persons mentioned in section twenty-four hundred and twenty-six who have been actually engaged in any battle in any of the wars in which this country has been engaged since seventeen hundred and ninety and prior to March third, eighteen hundred and fifty-five.

Second. Those volunteers who served at the invasion of Plattsburgh in September, eighteen hundred and fourteen.

Third. The volunteers who served at the battle of King's Mountain, in the Revolutionary war.

Fourth. The volunteers who served at the battle of Nickojack against the Confederate savages of the South.

Fifth. The volunteers who served at the attack on Lewistown, in Delaware, by the British fleet in the war of eighteen hundred and twelve.

SEC. 2428. WIDOWS AND CHILDREN, OF PERSONS ENTITLED UNDER SECTION 2425.—In the event of the death of any person who would be entitled to a warrant, as provided in section twenty-four hundred and twenty-five, leaving a widow, or, if no widow, a minor child, such widow or such minor child shall receive a warrant for the same quantity of land that the decedent would be entitled to receive if living on the third day of March, eighteen hundred and fifty-five. 3 Mar., 1855, c. 207, s. 2, v. 10, p. 702.

SEC. 2429. SUBSEQUENT MARRIAGE OF WIDOW.—A subsequent marriage shall not impair the right of any widow, under the preceding section, if she be a widow at the time of her application. Ibid.

SEC. 2430. MINORS UNDER SECTION 2428.—Persons within the age of twenty-one years on the third day of March, eighteen hundred and fifty-five, shall be considered minors within the intent of section twenty-four hundred and twenty-eight. Ibid.

SEC. 2431. PROOF OF SERVICE.—Where no record evidence of the service for which a warrant is claimed exists, parol evidence may be admitted to prove the service performed, under such regulations as the Commissioner of Pensions may prescribe. 3 Mar., 1855, c. 207, s. 3, v. 10, p. 702.
14 May, 1856, c. 26, s. 3, v. 11, p. 8.

SEC. 2432. FORMER EVIDENCE OF RIGHT TO BOUNTY LAND TO BE RECEIVED IN CERTAIN CASES.—Where a certificate or a warrant for bounty land for any less quantity than one hundred and sixty acres has been issued to any officer or soldier, or the widow or minor child of any officer or soldier, the evidence upon which such certificate or warrant was issued shall be received to establish the service of such officer or soldier in the application of himself, or of his widow or minor child, for a warrant for so much land as may be required to make up the full sum of one hundred and sixty acres, to which he may be entitled under the preceding section, on proof of the identity of such officer or soldier, or, in the case of his death, of the marriage and identity of his widow, or, in case of her death, of the identity of his minor child. But if upon a review of such evidence the Commissioner of Pensions is not satisfied that the former warrant was properly granted, he may require additional evidence, as well of the term as of the fact of service. 14 May, 1856, c. 26, s. 1, v. 11, p. 8.

SEC. 2433. ALLOWANCE OF TIME OF SERVICE FOR DISTANCE FROM HOME TO PLACE OF MUSTER OR DISCHARGE.—When any company, battalion, or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment was organized to the place where the same was mustered into the service of the United States, and one day for every twenty miles from the place where such company, battalion, or regiment was discharged to the place where it was organized and from whence it marched to enter the service, provided that such march was in obedience to the command or direction of the President, or some general officer of the United States commanding an army or department, or the chief executive officer of the State or Territory by which such company, battalion, or regiment was called into service. 14 May, 1856, c. 26, s. 7, v. 11, p. 9.
22 Mar., 1852, c. 19, s. 5, v. 10, p. 4.

SEC. 2434. INDIANS INCLUDED.—The provisions of all the bounty-land laws shall be extended to Indians in the same manner and to the same extent as to white persons. 3 Mar., 1855, c. 207, s. 7, v. 10, p. 702.

14 May, 1856, c.
24, s. 2, v. 11, p. 8.

SEC. 2435. FORMER EVIDENCE OF RIGHT TO A PENSION TO BE RECEIVED IN CERTAIN CASES ON APPLICATION FOR BOUNTY LAND.—

When a pension has been granted to any officer or soldier, the evidence upon which such pension was granted shall be received to establish the service of such officer or soldier in his application for bounty land; and upon proof of his identity as such pensioner, a warrant may be issued to him for the quantity of land to which he is entitled; and in case of the death of such pensioned officer or soldier, his widow shall be entitled to a warrant for the same quantity of land to which her husband would have been entitled, if living, upon proof that she is such widow; and in case of the death of such officer or soldier, leaving a minor child and no widow, or where the widow may have deceased before the issuing of any warrant, such minor shall be entitled to a warrant for the same quantity of land as the father would have been entitled to receive, if living, upon proof of the decease of father and mother. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the pension was properly granted, he may require additional evidence, as well of the term as of the fact of service.

28 Sept., 1850,
c. 85, s. 4, v. 9, p.
521.

SEC. 2436. SALES, MORTGAGES, LETTERS OF ATTORNEY, ETC., MADE BEFORE ISSUE OF WARRANT TO BE VOID.—All sales, mortgages, letters of attorney, or other instruments of writing going to affect the title or claim to any warrant issued, or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes whatsoever; nor shall such warrant, or the land obtained thereby, be in any wise affected by, or charged with, or subject to the payment of any debt or claim incurred by any officer or soldier prior to the issuing of the patent.

Ibid.

SEC. 2437. WARRANTS TO BE LOCATED FREE OF EXPENSE BY COMMISSIONER OF THE GENERAL LAND OFFICE, ETC.—It shall be the duty of the Commissioner of the General Land Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to the General Land Office for the purpose, in such State or land district as the holder or warrantee may designate, and upon good farming land, so far as the same can be ascertained from the maps, plats, and field notes of the surveyor, or from any other information in the possession of the local office, and upon the location being made the Secretary shall cause a patent to be transmitted to such warrantee or holder.

28 Sept., 1850,
c. 85, s. 1, v. 9, p.
520.

SEC. 2438. DESERTERS NOT ENTITLED TO BOUNTY LAND.—No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster rolls of his regiment or corps that he deserted or was dishonorably discharged from service.

27 Apr., 1816,
c. 127, s. 1, v. 3, p.
317.

SEC. 2439. LOST WARRANTS, PROVISIONS FOR.—When a soldier of the Regular Army, who has obtained a military land warrant, loses the same, or such warrant is destroyed by accident, he shall, upon proof thereof to the satisfaction of the Secretary of the Interior, be entitled to a patent in like manner as if the warrant was produced.

27 Apr., 1816,
c. 127, s. 2, v. 3, p.
317.

SEC. 2440. DISCHARGES, OMISSIONS, AND LOSS OF, PROVIDED FOR.—In all cases of discharge from the military service of the United States of any soldier of the Regular Army, when it appears to the satisfaction of the Secretary of War that a certificate of faithful services has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission

shall not prevent the issuing of the warrant and patent as in other cases. And when it is proved that any soldier of the Regular Army has lost his discharge and certificate of faithful service the Secretary of War shall cause such papers to be furnished such soldier as will entitle him to his land warrant and patent, provided such measure is justified by the time of his enlistment, the period of service, and the report of some officer of the corps to which he was attached.

SEC. 2441. NEW WARRANT ISSUED IN LIEU OF LOST WARRANT.—23 June, 1860, c. 203, s. 1, v. 12, p. 90. 20 June, 1874, c. 330, v. 18, p. 111. Whenever it appears that any certificate or warrant, issued in pursuance of any law granting bounty land, has been lost or destroyed, whether the same has been sold and assigned by the warrantee or not, the Secretary of the Interior is required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned, located, and patented in like manner as other certificates or warrants for bounty land are now authorized by law to be assigned, located, and patented; and in all cases where warrants have been or may be reissued, the original warrant, in whosoever hands it may be, shall be deemed and held to be null and void, and the assignment thereof, if any there be, fraudulent; and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for a valuable consideration.

SEC. 2442. REGULATIONS BY SECRETARY OF INTERIOR.—23 June, 1860, c. 203, s. 2, v. 12, p. 91. 20 June, 1874, c. 330, v. 18, p. 111. The Secretary of the Interior is required to prescribe such regulations for carrying the preceding section into effect as he may deem necessary and proper in order to protect the Government against imposition and fraud by persons claiming the benefit thereof; and all laws and parts of laws for the punishment of frauds against the United States are made applicable to frauds under that section.

SEC. 2443. MODE OF ISSUING PATENTS TO THE HEIRS OF PERSONS ENTITLED TO BOUNTY LANDS.—3 Mar., 1843, Res. No. 7, v. 5, p. 650. In all cases where an officer or soldier of the Revolutionary war, or a soldier of the war of eighteen hundred and twelve, was entitled to bounty land, has died before obtaining a patent for the land, and where application is made by a part only of the heirs of such deceased officer or soldier for such bounty land, it shall be the duty of the Secretary of the Interior to issue the patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs, generally, shall inure to the benefit of the whole, in such portions as they are severally entitled to by the laws of descent in the State or Territory where the officer or soldier belonged at the time of his death.

SEC. 2444. DEATH OF CLAIMANT AFTER ESTABLISHING RIGHT AND BEFORE ISSUING OF WARRANT.—3 June, 1858, c. 84, s. 1, v. 11, p. 308. When proof has been or hereafter is filed in the Pension Office, during the lifetime of a claimant, establishing, to the satisfaction of that office, his right to a warrant for military services, and such warrant has not been or may not be issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in his widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all military bounty-land warrants issued pursuant to law shall be treated as personal chattels, and may be conveyed by assignment of such widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only.

3 Mar., 1839, c.
138, v. 15, p. 236.

SEC. 2445. WHEN PROOFS MAY BE FILED BY LEGAL REPRESENTATIVES.—The legal representatives of a deceased claimant for a bounty-land warrant, whose claim was filed prior to his death, may file the proofs necessary to perfect such claim.

3 Mar., 1853, c.
147, s. 1, v. 10, p.
256.

SEC. 2446. RELOCATION OF MILITARY BOUNTY-LAND WARRANTS IN CASES OF ERROR.—Where an actual settler on the public lands has sought, or hereafter attempts, to locate the land settled on and improved by him, with a military bounty-land warrant, and where, from any cause, an error has occurred in making such location, he is authorized to relinquish the land so erroneously located, and to locate such warrant upon the land so settled upon and improved by him, if the same then be vacant, and if not, upon any other vacant land, on making proof of those facts to the satisfaction of the land officers, according to such rules and regulations as may be prescribed by the Commissioner of the General Land Office, and subject to his final adjudication.

LAWS PRIOR TO THE REVISED STATUTES SAID TO BE STILL IN FORCE.

ACT OF FEBRUARY 11, 1847.

SEC. 9. *And be it further enacted*, That each noncommissioned officer, musician, or private, enlisted or to be enlisted in the Regular Army, or regularly mustered in any volunteer company for a period not less than twelve months, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed, or died of wounds received or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the War Department for the quantity of one hundred and sixty acres. * * * That in the event of the death of any such noncommissioned officer, musician, or private, during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor, and inure to the benefit, of his family or relatives, according to the following rules: First to the widow and to his children; second, his father; third, his mother; and in the event of his children being minors, then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested: *Provided further*, That every such noncommissioned officer, musician, and private, who may be entitled under the provisions of this act to receive a certificate or warrant for one hundred and sixty acres of land, shall be allowed the option to receive such certificate or warrant, or a Treasury scrip for one hundred dollars; and such scrip whenever it is preferred, shall be issued by the Secretary of the Treasury to such person or persons as would be authorized to receive such certificates or warrants for lands; said scrip to bear an interest of six per cent per annum, payable semiannually, redeemable at the pleasure of the Government. And that each private, noncommissioned officer, and musician, who shall have been received into the service of the United States since the commencement of the war with Mexico, for less than twelve months, and shall have served for such term or until honorably discharged, shall be entitled to receive a warrant for forty acres of land, which may be subject to private entry, or twenty-five dollars in scrip, if preferred; and in the event of the death of such volunteer during his term of service, or after an honorable discharge, but before the passage of this act, then the warrant for such land or scrip shall issue to the wife, child, or children, if there be any, and if none, then to the father, and if there be no father, then to the mother of such deceased volunteer.

ACT OF MAY 27, 1848, AMENDING ACT OF FEBRUARY 11, 1847.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "relatives," as used in the ninth section of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved eleventh February, eighteen hundred and forty-seven, shall be considered as extending to the brothers and sisters of those persons whose services, under that act, may have entitled them to the land therein: *Provided,* The order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal portions to the brothers and sisters of the deceased, as the case may be.

SEC. 2. *And be it further enacted,* That the benefits of the said act of eleventh February, eighteen hundred and forty-seven, shall not be construed as forfeited by the privates and noncommissioned officers who have been or may be promoted to the grade of commissioned officer during their service in Mexico, and who shall have subsequently fulfilled the condition of their engagements: *Provided,* Such promotion shall have been made subsequent to the original organization of the company, corps, or regiment to which such privates and noncommissioned officers may have belonged.

ACT OF JUNE 16, 1848.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That on the restoration of peace with Mexico by a treaty of peace duly ratified and proclaimed, all the military forces of the United States, whether volunteers, regulars, or the Marine Corps, who by law or the terms of their engagement are to be discharged at the close of the war, shall, under the direction of the President of the United States, be transported or marched with the least practicable delay, to such posts or places in the United States as may be least expensive and most convenient to the troops—and at such places they shall be discharged from the service of the United States; and that until they shall respectively reach such places and be discharged, the officers and men shall be considered, paid, and treated as in the service of the United States in the same manner as if the war had not closed.

ACT OF JULY 10, 1848.

SEC. 2. *And be it further enacted,* That those enlisted men of the ordnance department who have served, or may serve in Mexico during the war with that country, shall be entitled to, and shall receive, the same bounty in land as is or may be allowed by law to other regular troops in the service of the United States, and under like limitations and restrictions.

ACT OF AUGUST 10, 1848.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the officers, noncommissioned officers, privates, and musicians of the marine corps, who have served with the Army in the war with Mexico, and also the artificers and laborers of the ordnance corps serving in said war, be placed, in all respects as to bounty land and other remuneration, in addition to ordinary pay, on a footing with the officers, noncommissioned officers, privates, and musicians of the Army: *Provided,* That this remuneration shall be in lieu of prize money and all other extra allowances.

ACT OF MARCH 3, 1849.

AN ACT making appropriation for the civil and diplomatic expenses of Government for the year ending the 30th of June, 1850, and for other purposes.

For the redemption of the Treasury scrip heretofore issued for the satisfaction of the bounties promised to the noncommissioned officers, musicians, and privates by

the ninth section of the act of the eleventh of February, eighteen hundred and forty-seven, to raise for a limited time an additional military force, and for other purposes, and for the satisfaction, in money, of such bounties due undersaid section of said act as those to whom they are due may elect to receive in money instead of land, three hundred thousand dollars. And the Secretary of the Treasury is hereby directed, immediately after the passage of this act, to give notice by publication for sixty days in at least one of the principal papers in Washington City, Baltimore, Philadelphia, New York, and Boston, and in such other papers as he may deem expedient, that the principal and interest of such scrip as has been or may be issued prior to the first of July, Anno domini eighteen hundred and forty nine, will be paid on that day on presentation at the Treasury of the United States, and that the interest on such scrip will cease on that day. And the said Secretary is further directed not to issue scrip for said bounty after that day, but to pay the same in money out of this appropriation in all cases when the person entitled to the bounty in land shall elect to receive money in lieu thereof.

D.—RULES OF PRACTICE IN CASES RELATING TO PENSIONS AND BOUNTY LANDS.

FIRST—IN APPEALS BEFORE THE SECRETARY OF THE INTERIOR.

RULE 1.

An appeal will lie to the Secretary of the Interior from the final action or order of the Commissioner of Pensions in all cases relating to pensions or bounty lands, and each claim so appealed must be accompanied with its separate appeal and specification of the errors alleged therein.

RULE 2.

The appeal must be filed with the Secretary and point out, specifically, mistake or error of fact or law in the decision, judgment, or order complained of; and no appeal will be entertained which fails to meet the requirements of this rule.

RULE 3.

New and material evidence relative to the grounds of rejection, filed subsequent to the action or order from which the appeal is taken, will not be considered by the Secretary until the same has first been passed upon by the Bureau of Pensions.

RULE 4.

An appeal from the action of the Bureau of Pensions refusing to recognize a power of attorney, or to pay a fee to appellant, should be based upon the reasons assigned by said Bureau for its action, and should set forth the grounds of the complaint, referring to the rules of practice by which it is believed the complaint is sustained.

RULE 5.

An appeal taken on behalf of a claimant, by or through a suspended or disbarred attorney, will not be entertained.

RULE 6.

Motions for review of departmental decisions, except where questions of fee are involved (for which other rules are provided), will be allowed in the discretion of the Secretary, and the requirements of Rules 1, 2, 3, and 5 as to appeals, are hereby made strictly applicable to motions for review.

RULE 7.

No appeal pertaining to the allowance of fee, where refundment has been called for, will be entertained, unless refundment, as required, shall have been made.

RULE 8.

No claim, the rejection whereof has been affirmed by the Secretary, shall be reopened without his approval. To that end, whenever new and material evidence shall have been filed, the case may, on the report of the Commissioner, with his opinion, be again submitted to the Secretary for action.

RULE 9.

From and after September 1, 1893, more than one motion for reconsideration of a decision adverse to a claim for a fee, or to a refundment of the same, or for recognition in a pension case, will not be entertained by the Department of the Interior.

The motion which is allowed must be signed by the person propounding it, with his oath or affirmation accompanying, that it is not intended for delay, but because he firmly believes injustice has been done; which oath shall be taken before an officer authorized to administer the same for general purposes.

Said motion must be based on (1) material error in law or fact, or (2) after-discovered evidence. If the first, the error must be specifically alleged, and authorities cited, or reason given, to establish the existence thereof. If the second, the motion must allege that due diligence failed to disclose the existence of such evidence prior to the former decision of the question by the Department, and said evidence must accompany the motion.

A second motion for reconsideration, and all motions which fail to comply with the requirements of this rule will be transmitted to the Commissioner of Pensions, that the law division of his office may return them with proper explanations to the persons propounding them.

ADDITIONAL RULES, PROMULGATED AUGUST 17, 1894.

Whenever, in the consideration of an appeal, the Department shall direct that the appellant be examined by a surgeon or board of surgeons, and an order shall be issued to him for that purpose from the Bureau of Pensions, and he shall fail to present himself for examination within the time specified in the order, that fact shall be reported to the Secretary by the Commissioner of Pensions and shall be deemed a sufficient cause for the dismissal of the appeal. But such appeal may be renewed or reopened, upon good and sufficient cause shown, and the claimant shall be so advised.

When, upon the consideration of an appeal, the Secretary shall decide that the action appealed from was erroneous, and shall thereupon set aside such action and remand the case to the Bureau of Pensions for further action, such decision will be considered a final adjudication of the question, or questions, raised by the appeal; and if the Bureau shall again reject the claim it will not be reconsidered by the Secretary unless a new appeal be taken, and the claimant shall be so notified.

This rule shall be applicable to all cases now pending on appeal, notwithstanding any former directions that the same shall be returned to the Department for further consideration if the adverse action of the Bureau therein shall be adhered to.

SECOND—IN APPEALS BEFORE THE COMMISSIONER OF PENSIONS.

RULE 1.

An appeal by an attorney will not be entertained unless he has filed a duly executed power of attorney for this purpose from the claimant, or is entitled under the rules to recognition.

RULE 2.

Upon reference to the Bureau of Pensions of an appeal, that Bureau will ascertain whether the appeal has been taken in conformity with the rules of the Department, and if it should be found that it has not been so taken that fact should be reported to this Department, whereupon the appeal will be dismissed by the Secretary, and the claimant or his attorney will be advised by the Bureau of Pensions of this action and the reasons therefor.

RULE 3.

All additional evidence filed, with a view to the reopening of a rejected pension claim, must be filed in the Bureau of Pensions.

RULE 4.

An appeal in a pension claim will not be entertained until the applicant has filed all attainable evidence and obtained the decision of the Bureau of Pensions thereon.

RULE 5.

When an appeal to the Secretary of the Interior from the rejection of a claim for pension is filed and upon examination of the case at the Bureau of Pensions it is found that the claim should be opened for further action, the Department must be informed of that fact and the appeal will be dismissed by the Secretary.

RULE 6.

If, upon the issue of a certificate of pension, the applicant claims that error exists as to the rate of his pension, he should present the facts to the Bureau of Pensions, and an appeal will not be entertained in such cases until after adverse action thereon has been taken by said Bureau.

RULE 7.

A report upon an appeal involving a medical question must be accompanied by an opinion of the medical referee thereon.

RULE 8.

An appeal from the action of the Bureau of Pensions refusing to recognize a power of attorney, or to pay a fee to appellant, should be based upon the reasons assigned by that Bureau for its action, and should set forth the grounds of the complaint, referring to the rules of practice by which it is believed the complaint is sustained.

RULE 9.

When final action has been taken by the Bureau of Pensions rejecting any pension claim, notice of such action, *with a brief statement of the grounds for such rejection*, shall at once be given by the Commissioner of Pensions to the claimant or the attorney of record.

RULE 10.

Claimants for pension shall be considered as having been duly notified of the action of the Bureau of Pensions in any claim where the notice required shall have been mailed to the address of the claimant or that of the attorney of record.

RULE 11.

The filing of an appeal in any case shall operate to suspend action in the Bureau of Pensions until the appeal has been disposed of, or other order made, by the Secretary. *Except*, where a claim is filed under the act of June 27, 1890, and an appeal is pending before the Secretary upon a claim under the general law, all papers will be returned to the Commissioner that the new claim may be adjudicated, after which the same will be retransmitted to the Secretary that the appeal may be decided.

ATTORNEYS—RULES OF PRACTICE BEFORE THE COMMISSIONER OF PENSIONS.

NOTE.—The following rules have been in force since January 1, 1890.

RULE 1.

A person appearing of record in this office as having complied with the requirements of the regulations prescribed by the Secretary of the Interior for the recognition of attorneys or agents for claimants before the Department of the Interior will be held authorized to prosecute any claim for pension on filing a power of attorney from the claimant.

RULE 2.

The written consent of a claimant is declared essential to a valid assignment of an attorneyship or agency from one attorney or agent to another; and the assignee shall file in each and every claim covered by the assignment the consent herein provided for, as well as a schedule of all claims assigned, which schedule shall set out the name of claimant, regiment, company, number of claim, and the character thereof.

RULE 3.

No attorney or agent shall have power to make a valid assignment of any claim in which he has been recognized for the purpose of prosecuting the same, even with the written consent of claimant, except he be at the time of such assignment and of the consent in good standing as a practitioner before this office.

RULE 4.

No power of attorney purporting to be executed by a claimant will be recognized as a good and valid authority unless the same be signed in the presence of two witnesses and acknowledged before an officer duly authorized to administer oaths for general purposes, whose official character is certified under seal.

RULE 5.

No fee contracts filed under the act of July 4, 1884, will be recognized as valid, or payment of fees made thereunder, unless the signature of claimant to the contract is witnessed by two attesting witnesses, and claimant's acknowledgment thereto is before some officer duly authorized to administer oaths for general purposes, whose official signature must be certified under seal. (Commissioner's ruling *In re Beller*, October 21, 1885.)

RULE 6.

Articles of agreement in claims for bounty land will be filed in duplicate, and when the claim shall have been allowed, and the bounty-land warrant issued, one approved copy of said agreement will be forwarded to the attorney of record and the other preserved with the record of the claim. The bounty-land warrant will be forwarded direct to the party entitled to the possession thereof.

RULE 7.

When an attorney or agent is disbarred, pending the adjudication of a claim, and while such disbarment is in force the claim is adjudicated and the certificate issued, and by reason of such disbarment no fee is certified, and thereafter said attorney or agent is restored to practice, and claimant has not by reason of such disbarment canceled or revoked the authority theretofore existing, upon such restoration as aforesaid the lawful fee will be certified and paid to him.

RULE 8.

When a claimant, pending the disbarment of his attorney of record, employs another attorney, who prosecutes the claim to final adjudication, no fee will be certified the disbarred attorney upon his restoration to practice, but his disbarment will operate as an estoppel to bar any claim for fee.

RULE 9.

A fee will not be allowed to a guardian who prosecutes the claim of his ward, nor to a firm of attorneys of which the guardian is a member.

RULE 10.

When an attorney or agent is called upon by this office to furnish evidence in any claim he will be allowed ninety days to furnish such evidence, or give reasons why he fails to do so: *Provided*, always, that before such attorney is dropped or another attorney recognized at any time within one year, he shall be given thirty days notice, to show cause why he is not guilty of laches.

In the event that such answer be not filed within thirty days from the mailing of such notice, or if the said answer to said notice shall be held by the Commissioner to be insufficient, claimant will be notified of such failure, either to file the evidence called for or show cause why it is not filed, and may file the same, either himself or by such other attorney as he may elect; and upon the recognition of such other attorney the former attorney or agent will be estopped from claiming any fee.

RULE 11.

To call up a case will not *per se* be held a substantial compliance with any specific requirement of this office. (Commissioner's ruling *in re* George L. Waggoner, October 19, 1885.)

RULE 12.

Attorneys will be required to execute due diligence in all cases in which they are recognized as attorneys of record. Neglect to prosecute a claim for one year will be held, in default of cause shown therefor, conclusive evidence of abandonment of a claim by an attorney, and claimant will be so informed. (Commissioner's ruling *in re* George L. Waggoner, October 19, 1885.)

RULE 13.

Upon the rejection of a claim for pension, or bounty land, the duly constituted attorney of record shall be notified of such rejection and the reason therefor, and shall be allowed ninety days from the date of such notice in which to file a motion for reconsideration sustained by material evidence, or to enter an appeal to the Secretary of the interior, in default of which he shall be held to have abandoned the case, and the claimant may employ any other duly qualified attorney to further prosecute the claim.

RULE 14.

No claims pending in this Bureau will be considered out of the regular order of business upon the request of attorneys or agents, or any other persons whomsoever, except for good cause shown and upon the order of the Commissioner of Pensions.

RULE 15.

From and after the 1st day of January, A. D. 1886, all pension agents where claimants allege payment by them of any sum or sums to their attorney of record shall request said claimants to make affidavit to the amount of payment, the date of payment, under what certificate made, and, as far as may be in their recollection, how such payment was made; and that the said affidavit shall be in manner and form substantially as provided by order No. 124, under date of December 3, 1885.

RULE 16.

Each and every affidavit shall be executed in duplicate, one to be retained by the pension agent as his voucher and authority in the premises for deducting the amount sworn to have been paid, and the duplicate thereof to be promptly forwarded to the Commissioner of Pensions for filing with the record in the claim wherein such affidavit purports to be made.

RULE 17.

Where claimant can not make such affidavit as is herein prescribed and set forth, with reasonable certainty, the pension agent shall pay the fee certified by the Commissioner of Pensions or called for by the fee agreements without deduction: *Provided*, That if, in the opinion of the pension agent, reasonable doubt exists as to the fact of said payment and yet the said claimant be unable to make such affidavit as herein prescribed, said agent shall certify said case to the Commissioner of Pensions for his consideration and decision. (See Sec. 4784, R. S.)

RULE 18.

Every attorney, agent, or other person recognized by this Department as entitled to practice before it, or before the Commissioner of Pensions in prosecuting claims for pensions, shall cause to be filed with the Commissioner of Pensions, not less than ten (10) days before the same are issued for general circulation, copies of all circular letters intended and framed to solicit business before the Commissioner of Pensions. And if at the end of ten days from filing the same such circular letters are not disapproved, and notice thereof furnished the person filing the same, they shall be held *prima facie* to be in manner and form approved.

RULE 19.

Claims for increase of pension shall not be considered or held as claims pending within the prohibition of section 190, Revised Statutes of the United States. (Secretary's decision on the appeal of Luther Harrison, October 6, 1885; Commissioner's ruling in *re* Deloss E. Topping, November 20, 1885.)

RULE 20.

Appeals by attorneys or agents to the Secretary of the Interior in pension and bounty-land cases will not be considered unless the Commissioner of Pensions has taken final action upon the question to which they relate. Such appeals must be addressed to the Secretary of the Interior, and must set forth the specific errors of law or of fact upon which they are based. Appeals which do not conform to the above requirements will be dismissed as informal.

RULE 21.

All rules and orders inconsistent with the foregoing are hereby abrogated.









